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SUPREME COURT OF THE UNITED STATES.

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THOMAS C. MOORE, APPELLANT,

v.

NELSON CLEMENTS AND EDWARD A. SHELDON, SURVIVING PARTNERS OF HENRY SHELDON, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

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NELSON CLEMENTS AND EDWARD A. SHELDON, SURVIVING PARTNERS OF HENRY SHELDON, DEC'D.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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Supreme Court of the United States, No.

THOMAS C. MOORE, appellant,
v.
HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, appellees. } In Equity.

Appeal from the District Court of the United States for the Western District of Texas.

At a term of the District Court of the United States for the Western District of Texas, exercising the powers and jurisdiction of a Circuit Court of the United States, begun and held at Austin, in said western district of Texas on the first Monday of June, in the year of our Lord one thousand eight hundred and sixty; present, the Honorable Thomas H. Duval, judge of said court, William C. Young, Esq., United States Marshal, and Matthew Hopkins, clerk. Among other, were the following proceedings, to wit:

Be it remembered, that heretofore, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and sixty, in open court, came the appellant, Thomas C. Moore, by his solicitors, Geo. W. Paschal and Isaiah A. Paschal, and filed his prayer for an appeal from a decree rendered in this court at a former term of the District Court of the United States for the District of Texas, to wit, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and fifty-five, at the November term of said court, the Hon. John C. Watrous being then judge, and William P. de Normandie, clerk, in a certain cause, numbered one on the chancery side of said court, entitled,

Title of Cause.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, complainants,
v.
JAMES NICHOLSON, REBECCA A. NICHOLSON, and THOMAS C. MOORE, defendants. } No. 1. Chancery.

Prayer for Appeal.

Which said prayer for an appeal is indorsed, No. 1. Henry Sheldon & Co. *v.* James Nicholson et al. Petition of Thomas C. Moore for

appeal: (indorsed), filed July 2d, 1860, M. Hopkins, clerk, Paschals, and which is in words to wit:

District Court of the United States, Western District of Texas, at Austin.

To the Honorable Thomas H. Duval, judge of the District Court of the United States for the Western District of Texas, at Austin.

The petition of Thomas C. Moore, a citizen of the State of Texas, respectfully represents, that at a former term of the District Court of the United States for the District of Texas, at Austin, to wit, on the twenty-eighth day of December, in the year eighteen hundred and fifty-five, a final decree was rendered by said court in a certain cause then depending in said court in chancery, wherein Henry Sheldon, Nelson Clements and Edward A. Sheldon, as partners of said firm of Henry Sheldon & Co., were complainants, and James Nicholson, Rebecca Nicholson and Thomas C. Moore (your petitioner), were defendants, as by the proceedings in said cause now remaining of record in this court will appear.

That the decree so rendered was erroneous, imperfect, and contrary to the rights of said defendant, Thomas C. Moore, and the principles of equity in several respects:

First. In adjudging and decreeing that the sale of the goods made by his co-defendant Nicholson to your petitioner was fraudulent, and intended to delay and hinder the creditors of said Nicholson, and adjudging that the same be set aside.

Second. In refusing to dismiss the bill as against your petitioner.

Third. Rendering a decree against your petitioner for costs.

Fourth. In not doing full and complete justice to your petitioner, as in said proceedings will appear.

Your petitioner says, that his co-defendants, James and Rebecca Nicholson, refuse to prosecute this appeal with him, and now your petitioner claims an appeal against the said Nelson Clements and Edward A. Sheldon, the surviving partners of Henry Sheldon, deceased, to the Supreme Court of the United States, at its next term at Washington.

GEO. W. PASCHAL,
Counsel for Petitioner.

And on the same day, the chancellor making order on the application of the petitioner, the following entry appears on the chancery minutes in words to wit:

Order granting Appeal.

HENRY SHELDON et als.
v.
JAMES NICHOLSON,
THOMAS C. MOORE et al.
} 1. Chancery.

July 2d, A.D. 1860.

On this day came the defendant, Thomas C. Moore, one of the defendants in the foregoing entitled cause, by his solicitor, G. W. Paschal, and suggesting the death of Henry Sheldon, one of the complainants in this cause, filed his prayer for an appeal against Nelson Clements and Edward A. Sheldon, the surviving partners of Henry Sheldon, deceased; and the chancellor having considered the application, and due notice baving been given the solicitors of complainants in this cause of the prayer for appeal, and the bond filed being approved, the appeal is granted, returnable to the next term of the Supreme Court of the United States.

Appeal Bond.

The appeal bond filed is in words to wit:

Know all men by these presents, that we, Thomas C. Moore, of the State of Texas, and John T. Miller, of the State of Texas, are held and firmly bound to Nelson Clements, and Edward A. Sheldon, of the State of New York, in the full and just sum of five hundred dollars, to be paid to the said obligees, their certain attorney, executors and administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this thirtieth day of June, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately, at a term of the District Court of the United States for the District of Texas, holding and exercising Circuit Court powers, in a cause pending in said court, wherein the said Henry Sheldon, Nelson Clements, and Edward A. Sheldon were complainants, and the said obligees were defendants, and numbered one (1) upon the chancery docket of said court, a decree was rendered against the said Thomas C. Moore in favor of Henry Sheldon, and the said Nelson Clements, and Edward A. Sheldon, from which decree the said Thomas C. Moore has obtained an appeal to reverse the aforesaid and also a citation directed to the said obligees, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next.

Now the condition of the above obligation is such, that if the said Thomas C. Moore shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the

above obligation to be void, otherwise to remain in full force and virtue.

THOMAS C. MOORE, [SEAL.]
JOHN T. MILLER, [SEAL.]

Approved this 2d July, 1850.

T. H. DUVAL,
U. S. Dist. Judge.

Citation on Appeal.

The citation filed with the bond is in words to wit:

United States of America.

The President of the United States, to Nelson Clements and Edward A. Sheldon, surviving partners of Henry Sheldon.

You are hereby cited and admonished to appear at the next term of the Supreme Court of the United States, to be held at Washington, on the first Monday of December next, to show cause, if any there be, why the decree rendered in your favor by the District Court of the United States for the District of Texas, in a certain cause or suit therein formerly depending, between Henry Sheldon, Nelson Clements and Edward A. Sheldon, as complainants, and Thomas C. Moore, James Nicholson and Rebecca Nicholson as defendants, and numbered one (1) upon the chancery docket of said court, at Austin, should not be reversed, and speedy justice be done to the parties in that behalf, in pursuance of an appeal obtained against said Nelson Clements and Edward A. Sheldon, surviving partners of Henry A. Sheldon, by said Thomas C. Moore, one of said defendants, according to his petition filed in the District Court of the United States for the Western District of Texas, at Austin.

Witness the Honorable Thomas H. Duval, the Judge of the District Court of the United States for the Western District of Texas, at Austin, this 2d day of July, A.D. 1860.

T. H. DUVAL,
U. S. Dist. Judge.

[SEAL.] In teste whereof, I have hereunto set my hand and the impress of the seal of court, at Austin, this 2d day of July, A.D. 1860.

MATTHEW HOPKINS,
Clerk.

The acceptance of due service is indorsed on the citation in appeal, in words to wit:

We acknowledge due service of the within citation in appeal. July 5th, 1860.

F. W. CHANDLER,
Solicitor for Complainants.

The citation is indorsed: No. 1. Henry Sheldon & Co. *v.* James Nicholson et als. citation, filed July 2d, 1860, M. Hopkins, clerk, Paschal.

At a term of the District Court of the United States in and for the District of Texas, begun and held at the city of Austin, on the third Monday in November, in the year of our Lord one thousand eight hundred and fifty-five, present the Honorable John C. Watrous, judge of said court, Benjamin McCulloch, Esq., United States Marshal, and William P. de Normandie, clerk. In the record of proceedings of said court, amongst others, are the following, to wit:

Title of Cause.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, complainants, *v.* JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, defendants. } No. 1. Chancery.

Be it remembered that, heretofore, to wit: on the first day of July, in the year of our Lord one thousand eight hundred and fifty-three, Henry Sheldon, Nelson Clements and Edward A. Sheldon, composing the mercantile firm of Henry Sheldon & Co., complainants, by their solicitors, Hamilton & Chandler, filed in the clerk's office of the District Court of the United States for the District of Texas, at Austin, their bill of complaint herein, which is in the words and terms following, which bill is indorsed, to wit: File No. 1.

HENRY SHELDON & Co., complainants, *v.* JAMES NICHOLSON & THOMAS C. MOORE, defts.

Filed July 1st, 1853.

W. P. DE NORMANDIE, Clerk.

HAMILTON & CHANDLER, Solicitors.

And which bill is in words to wit:

Bill.

The United States of America, District of Texas. Fall Term, 1853.

To the Honorable John C. Watrous, Judge of the United States District Court for the District of Texas.

Your orators, Henry Sheldon, Nelson Clements, and Edward A.

Sheldon, former partners in the mercantile business in the city of New York, trading under their firm name and style of Henry Sheldon & Co., and who are now resident citizens of the said city and State of New York, complainants, complaining of James Nicholson and Thomas C. Moore, defendants, and resident citizens of the county of Bastrop, in said State of Texas, showeth unto your honor,

1st. That James Nicholson, a resident citizen of the county of Bastrop, in said State of Texas, became indebted to your orators for goods, wares, and merchandise, purchased by him, the said Nicholson, of them your orators, and for insurance and other moneys paid for him, and at his instance and request; and was further indebted to them as aforesaid, on the 13th day of March, 1851, in the sum of ten thousand six hundred and ninety-one dollars and six cents; for which amount, he, the said Nicholson, subsequently, to wit, on the 30th day of September, 1851, executed his note in favor of your orators, payable one day after date. Upon which said note your orator brought suit against the said James Nicholson, in the District Court for the said county of Bastrop, and at the fall term, 1852, thereof, to wit, on the 20th day of November, recovered a judgment against him for the sum of eleven thousand six hundred and sixty dollars and four cents, for their principal debt and interest, and the sum of eight dollars and seventy cents costs of suit; upon which judgment executions has been issued and returned by the sheriff of the aforesaid county of Bastrop, no property found. A certified copy of said judgment and execution is hereto appended, marked Exhibit No. 1, and prayed to as a part of this bill.

2d. That after the said indebtedness of the said Nicholson to your orators, and before the execution of said note, to wit, on or about the day of , 1851, the said Nicholson being largely indebted to others besides your orators, to wit, to the amount (including the amount due your orators) of twenty thousand dollars, and being then in the possession of goods, wares, and merchandise, at his storehouse in the said town of Bastrop, to the amount of eighteen thousand dollars at the cost, rate, and expenses of transportation thereon, sold said goods, wares, and merchandise, together with certain real estate situate in said town of Bastrop, which will be hereafter particularly pointed out and described, to one Thomas C. Moore, a resident citizen of said county of Bastrop.

3d. That at the time of sale by said Nicholson to said Moore, he, the said Nicholson, was in failing circumstances, and unable to meet the debts that were then due against him and being presented for payment; all of which, as your orators are advised and believe, was well known to the said Thomas C. Moore. And your orators state particularly that the said Moore knew of the indebtedness of said Nicholson to your orators; that it was at the suggestion of the said Moore, and upon his advice, that the said Nicholson made the trans-

fer of said goods, wares, and merchandise, and real property, in fraud, as your orators believe and charge, of their rights as creditors. That for the purpose of defrauding your orators of their debt, the said James Nicholson and Thomas C. Moore colluded together in the following manner: the said Thomas C. Moore proposed to take the stock of goods at a discount from New York prices of 30 per cent., giving to the said Nicholson small notes, due at different times, and that whatever profit might be made off said goods by said Moore should be shared between said Nicholson and said Moore; and upon said terms and understanding the said goods were transferred to the said Moore by the said Nicholson, and at the same time the said Nicholson transferred to the said Moore two certain lots in the said town of Bastrop, known and distinguished in the plan of said town as follows, to wit: lot No. in block No. , with the improvements thereon, and also farm lot No. with the improvements thereon; which two lots and improvements your orators are advised, and believe, and charge, were worth at the time of said transfer the sum of two thousand dollars. That said transfer of said lots were made without any consideration whatever passing from said Moore to said Nicholson, and with a view to defraud the creditors of the said Nicholson; or if there was any consideration therefor, it was an inconsiderable amount, due from the said Nicholson to some third party, for which said Moore was security, and which amount has since been paid off by the said Nicholson; and that the said Moore now holds said lots without any consideration, and in fraud of your orators' rights as creditors.

4th. That the amount of notes given by the said Moore to the said Nicholson for said goods, wares, and merchandise, and for said two lots, amounted to the sum of eight thousand dollars only, to be paid in different instalments, without interest upon any of said payments. Thus your orators charge that twelve thousand dollars' worth of property passed from the said Nicholson into the hands of the said Moore without consideration and in fraud of your orators' rights.

5th. That said Moore, upon the consummation of said fraudulent contract, advised said Nicholson to make an assignment of his effects for the benefit of his creditors, and to withhold from his trustee two of the notes for five hundred dollars, each which he the said Moore had executed to the said Nicholson for the transfer of said goods, wares, and merchandise, and lots, as aforesaid; and further advised him the said Nicholson to retain the said notes out of the general surrender for the benefit of his creditors, and to appropriate them to his the said Nicholson's private benefit; all which was done by the said Nicholson.

6th. And your orators aver and charge that, by reason of the collusion and fraud of the said Nicholson and Moore, they have been prevented from realizing their said debt or any portion thereof. That the market price of said goods, wares, and merchandise in the

town of Bastrop was at least fifty per cent. upon the New York cost; and so your orators charge that the said goods, wares, and merchandise were actually worth, at the time of the transfer as aforesaid, the sum of twenty-seven thousand dollars. That the said James Nicholson had no other visible or tangible property besides that conveyed to the said Moore as aforesaid out of which your orators could make their said debt, or any portion thereof, and are now left remediless, unless by the interposition of your honor's court in the premises.

Your orators aver and charge particularly that said conveyance of said goods, wares, and merchandise was made by the said Nicholson to the said Moore when the said Nicholson was in failing circumstances, which was fully known to said Moore. That the amount for which the said Moore executed his notes to the said Nicholson was less than one-half of the just value and market price of said goods. That there was a secret contract and understanding between said parties that they were to share whatever profit should be made upon said fraudulent purchase. That there was no consideration passed from the said Moore to the said Nicholson for the two lots and improvements situate in the said town of Bastrop as aforesaid, and that they are now fraudulently held by the said Moore, with a view to defeat the rights of your orators and other creditors of the said Nicholson. That the said Moore further colluded with the said Nicholson, and aided and advised him the said Nicholson to withhold two five hundred dollar notes, which he the said Moore had executed for the said goods, from a general surrender which he the said Nicholson pretended to make of his assets for the benefit of his creditors shortly after the said fraudulent conveyance.

(A.) That the said Moore has in manner aforesaid, and in divers other ways, aided and abetted the said Nicholson in defrauding your orators of their just rights; the said Nicholson having no other property out of which to make their said debt, or any portion thereof, and he the said Nicholson having in his said assignment preferred other creditors to more than the amount of the assets which were placed in the hands of the trustee appointed. That said Moore has never accounted or paid the said Nicholson any portion of said profits upon said fraudulent purchase. Wherefore, by reason of the aforesaid fraudulent actings and doings of the said Moore, your orators are advised and believe that he is liable to them for the amount of their said judgment against said Nicholson.

Wherefore, the premises considered, your orators pray that the said parties, the said James Nicholson and the said Thomas C. Moore, both of whom are resident citizens of the said county of Bastrop, in the State of Texas, may be made parties defendant hereto, and severally required to make answer hereto, within the time required by law and the rules of your honor's court, in your honor's said court to be holden in the city of Austin, in the county

of Travis, on the third Monday in November next. That they severally be required to make full answer to each and every allegation herein contained, upon their respective corporal oaths. And that the said Moore be required, in addition to the answers which he may make to the foregoing charges, to answer and set forth what amount he paid for said goods. What amount of goods did you receive from the said Nicholson at New York prices? What was the amount of the account of stock taken at the time you purchased them? and attach to your answer the original invoices, and also the account of stock taken at the time of the said transfer. At what profit did you sell said goods, or any portion of them, upon the prices paid by you? or at what advance upon New York prices? Please bring into court your books of sale. And let each of them answer whether the said Moore has paid to the said Nicholson any portion of the profits made by him the said Moore upon said purchase. And that the said Nicholson be required to state whether or not the said Moore knew that he, Nicholson, was in failing circumstances at the date of the aforesaid pretended sales of goods, wares, and merchandise, and the aforesaid lots and improvements in the town of Bastrop; and particularly whether the said Moore knew of the indebtedness of him the said Nicholson to your orators at the date of said purchase. Did you not inform the said Moore that you purchased a large portion of the goods, wares, and merchandise that you transferred to him from your orators, and that you then owed your orators for the same? State the amount of goods you transferred to him at New York costs and charges, and what per cent. they were worth in Bastrop over and above the cost and charges.

Upon the final hearing of this cause your orators pray for a judgment and decree of your honor's court, that the aforesaid sale, or pretended sale, from the said Nicholson to the said Moore, was a fraud upon the rights of your orators as creditors as aforesaid, and for a judgment and decree against the said defendants for their principal debt, interest, and costs of this action, and especially for a judgment and decree against the defendant, Thomas C. Moore, for their principal debt, interest, and costs of suit.

They further pray that the conveyance of the said Nicholson to said Moore of said two lots and improvements in the town of Bastrop, may be decreed to be fraudulent and void, that the same be ordered to be sold in satisfaction of your orators' said judgment, and for all such other and further relief in the premises as to equity and good conscience may seem meet, and as in duty bound they will ever pray, &c.

HAMILTON & CHANDLER,
Solicitors for Complainants.

Exhibit No. 1.

The State of Texas, County of Bastrop, in District Court, Fall Term, 1852.

To the judge of the Second Judicial District of said State.

Your petitioners, Henry Shelden, Nelson Clements, and Edwin A. Shelden, former partners in the mercantile business, trading under the firm name and style of Henry Shelden & Co., all resident citizens of the city, county, and State of New York, represent that James Nicholson, a resident citizen of the county of Bastrop, and State of Texas, on or about the 30th day of September, 1851, made, executed, and delivered to your petitioners his obligation in writing, commonly called a note of hand, in the words and figures substantially as follows:

BASTROP, Sept. 30th, 1851.

$1069 06.

One day after date I promise to pay to the order of Henry Shelden & Co. ten thousand six hundred and ninety-one dollars and six cents for value received, it being for a debt contracted by me prior to my assignment of my property for the benefit of my creditors.

JAMES NICHOLSON.

By means whereof, he, the said Nicholson became justly indebted and bound to pay your petitioners as the sum of money in said obligation specified, whenever the same became due, according to the tenor and effect thereof, together with interest at eight per cent. per annum from the first day of October, 1851, until paid. Petitioner further represents that the said Nicholson has never paid said debt, or any part thereof, although often requested so to do. Wherefore petitioners pray that citation may issue commanding said Nicholson to be and appear at the next regular term of your honor's court, to be holden in the town of Bastrop, in the county of Bastrop, and State of Texas, to answer all the charges in this petition. Upon a final hearing hereof, petitioners pray for a judgment against the said James Nicholson for their principal debt and interest, and all costs of this suit, and as in duty bound will ever pray.

CHANDLER, McFARLAND & CHANDLER,
Attorneys for Petitioners.

I hereby waive the filing of the foregoing petition, and the issuing a copy and writ thereon, and the service of the same by the sheriff, and accept service of said petition, and agree that it may be filed for the fall term, 1852, of the District Court of Bastrop County, October, 1852.

JAMES NICHOLSON.

Filed the 28th October, 1852.

JAS. P. WALLACE,
Clerk D. C. C. B.

BASTROP, Sept. 30th, 1851.

$1069 06.

One day after date I promise to pay to the order of Henry Shelden & Co. ten thousand six hundred and ninety-one dollars and six cents, for value received, it being for a debt contracted by me prior to my assignment of my property for the benefit of my creditors.

JAMES NICHOLSON.

Filed 20th November, 1852.

J. P. WALLACE,
Clerk D. C. C. B.

HENRY SHELDON & Co.
v.
JAMES NICHOLSON.

This day came the plaintiffs, by their attorneys, and it appearing to the satisfaction of the court the defendant has failed to file his answer in said cause within the time prescribed by law, but made default; it is therefore adjudged and decreed by the court that the plaintiffs, Henry Shelden, Nelson Clements, and Edward A. Shelden, under the firm name and style of Henry Shelden & Co., have and recover of the defendant, James Nicholson, the sum of eleven thousand six hundred and sixty dollars and twenty-four cents for their principal debt, and interest thereon until paid, together with all costs of this suit in this behalf expended, for which execution may issue.

The State of Texas, County of Bastrop.

To the sheriff of said county, greeting:

In the name and by the authority of the State of Texas. Whereas, Henry Shelden & Co. did, on the 20th day of November, A. D. 1852, before our honorable the District Court, then in session holding its fall term, 1852, in and for said county of Bastrop, recover a judgment against James Nicholson for debt, the sum of eleven thousand six hundred and sixty dollars and twenty-four cents, and the annexed bill of costs of eight dollars and twenty cents, which judgment remains unsatisfied; therefore these presents are to command you that of the goods, chattels, lands, and tenements of the said James Nicholson to be found in your county, you cause to be made the sum of eleven thousand six hundred and sixty dollars and twenty-four cents debt, with interest thereon from judgment, and the annexed bill of costs, eight dollars and twenty cents, together with your further legal fees and commissions for executing this writ, and that you make due return of the same herewith as the law directs.

Attest, James P. Wallace, clerk District Court, Bastrop county, with the seal of said court hereunto affixed, at office in the town of Bastrop, this 20th day of December, 1852.

JAMES P. WALLACE,
Clerk D. C. C. B.

Annexed Bill of Costs.

Clerk's fees: doct'g cause, 15 c.; ent'g deft., 50 c., . .	$0 65
Assessing damages, ...	50
Entering judg't, 50; filing 3 papers, 30; taxing costs, 25, .	1 05
Record, 1 50; ent'g sheriff's return, 50; ex., 50, . .	2 50
Sheriff's fees: venired fee, 50; ret'g ex., 50, . . .	1 00
Jury fee, ...	3 00
	$8 70

Issued 20th December, 1852.

JAS. P. WALLACE,
Clerk.

Came to hand 22d December, 1852.

JOHN HEAM,
Sheriff.

Returned, no property to be found, this 16th May, 1853.

JOHN HEAM,
Sheriff B. C.

The State of Texas, County of Bastrop.

I, James P. Wallace, clerk District Court, Bastrop county, do hereby certify that the foregoing is a true copy of the original records of my office of the foregoing cause of Henry Shelden & Co. *v.* James Nicholson.

Given under my hand and seal of office at Bastrop, this [SEAL.] 3d June, A. D. 1853.

JAS. P. WALLACE,
Clerk D. C. C. B.

And thereupon afterwards there issued from the clerk's office of the District Court of the United States for the District of Texas, at Austin in said district, to wit, on the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three, subpœnas to the defendants James Nicholson and Thomas C. Moore, in due form and course of law. On the eighth day of August, 1853, as it appears of record, both the defendants were duly served. And afterwards, to wit, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three, the said complainants, by their solicitors, filed their amended bill, which amended bill is in words to wit:

Amended Bill.

The United States of America, District of Texas. U. S. District Court for the District of Texas, Fall Term, 1853.

To the Honorable John C. Watrous, Judge of the District Court of the United States for the District of Texas.

Your orators, Henry Shelden, Nelson Clements, and Edward A. Shelden, former partners in the mercantile business in the city and State of New York, under the firm name of Henry Shelden & Co., now file this their amended petition in their suit instituted on the 1st day of July, 1853, against Thomas C. Moore and James Nicholson, resident citizens of the county of Bastrop, in the State of Texas, in said United States District Court.

Your orators state that the said lots mentioned in your orators' original petition as having been transferred by the said James Nicholson to the said Thomas C. Moore, at or about the time of the transfer of the goods from said Nicholson to said Moore, are as follows, to wit: a block of lots in the town of Bastrop, in said State of Texas, known in the plan of said town as block No. 95 (ninety-five), east of Main street, and lots No. 65 (sixty-five), No. 62 (sixty-two), and 70 (seventy), in block .

Your orators reiterate here all the charges and allegations made in their said original petition, in reference to the transfer of the lots mentioned in said original petition, and say that the said transfer of the said above-mentioned lots and blocks of lots were made by the said Nicholson to the said Moore without any consideration therefor; that the said transfers, copies of which are hereto appended, marked respectively A., B., C., and prayed to be taken and considered as a part of this petition, were made with the design and object of preventing the creditors of the said Nicholson from collecting their said debts; that the said transfers were and are fraudulent, and they, the said Nicholson and Moore, are severally required to answer and set forth what consideration, if any, passed from the said Moore to the said Nicholson for said lots, and if they were not made as herein charged, how otherwise.

Petitioners pray, in addition to the prayer contained in the original petition, that the said conveyance of said lots, copies of which are hereto attached, may be decreed to be fraudulent and void, and that the said lots may be decreed to be sold in satisfaction of your orators' said judgment against the said Nicholson, as stated in their original petition, and generally for such order and decree in the premises as to equity seems meet, and they as in duty bound will ever pray, &c.

HAMILTON & CHANDLER,
Attorneys for Complainants.

Exhibit A. of Amended Bill.

The State of Texas, County of Bastrop.

Know all men by these presents that I, James Nicholson, for and in consideration of two hundred and ten dollars of lawful money of the United States in hand paid, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey, unto Thomas C. Moore, his heirs and assigns, three certain farm lots lying and being in the town of Bastrop, and designated on the plat of said town as lot No. sixty-five (65), sixty-two (62), and seventy (70), formerly transferred from Samuel Wolfenbarger to James Nicholson, and recorded in the office of the clerk of the County Court of Bastrop county, with all the improvements thereunto belonging.

To have and to hold the same unto him, the said Thomas C. Moore, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his heirs and assigns, against every person whomsoever, claiming or to claim the same, or any part thereof.

Witness my hand and seal (in lieu of which I make my scrawl), this the thirteenth day of June, A. D. 1851.

Note the word thirteen interlined before signing.

JAMES NICHOLSON. [SEAL.]

Signed, sealed and delivered
in presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

I, R. H. Nicholson, release all right as dower to the land contained in the foregoing annexed deed for the consideration therein contained, this June 15th, 1851.

R. H. NICHOLSON. [SEAL.]

Signed in presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

Before me, the undersigned, clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known, and in my presence signed the foregoing annexed deed, and acknowledged that he had signed, sealed and delivered said deed for the consideration and purposes therein contained; likewise, at the same time and place, before me, the said clerk, personally appeared R. H. Nicholson, wife of said James Nicholson, and after having said deed ex-

plained to her, did then sign her name to said deed, and after being duly examined privately and apart from her husband touching the same, acknowledged that she had signed, sealed and delivered the same as her voluntary act and deed, for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In testimony whereof, I have hereunto set my hand and seal of office, this 13th day of June, A. D. 1851.

WILLIAM DUNBAR,
Clerk C. C. B. C.

I, William Dunbar, clerk of the County Court in and for said county, do hereby certify that the foregoing transcript is a true copy of the original, recorded in the county clerk's office, in book H, of deeds record, page 41 and 42.

In testimony whereof, I have hereunto set my hand and seal, this June 26th, A. D. 1853.

[SEAL.] WILLIAM DUNBAR,
C. C. B. C.

Exhibit A. By CICERO NASH,
Deputy.

Exhibit B.—Amended Bill.

The State of Texas, County of Bastrop.

Know all men by these presents, that I, James Nicholson, for and in consideration of two hundred dollars in lawful money of the United States in hand paid, have bargained, sold and conveyed, and by these presents do bargain, sell and convey unto Thomas C. Moore, his heirs and assigns, a certain block of lots in the town of Bastrop, known and designated on the plat of said town as block of lots No. ninety-five (95), east of Main street, formerly transferred by William Cannon to James Nicholson, and recorded in the office of the clerk of the County Court of Bastrop county, with all the improvements thereunto belonging. To have and to hold the same unto him, the said Thomas C. Moore, his heirs and assigns, forever, and I do hereby bind myself, my heirs, executors, administrators, to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his heirs and assigns, against every person whomsoever claiming or to claim the same, or any part thereof.

Witness my hand and seal, in lieu of which I use my scrawl, this thirteenth day of June, A. D. 1851.

Note the word Cannon was interlined before signing.

JAMES NICHOLSON. [SEAL.]

Signed, sealed and delivered
in presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

I, R. H. Nicholson, release all right as dower to the land contained in the foregoing annexed deed for the consideration and purposes therein contained, this June 13th, A. D. 1851.

R. H. NICHOLSON. [SEAL.]

Signed in presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

Before me, the undersigned, clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known, and in my presence signed his name to the foregoing annexed deed, and acknowledged that he had signed, sealed and delivered said deed for the consideration and purposes therein contained.

Likewise, at the same time and place, before me, the said clerk, personally appeared R. H. Nicholson, wife of the said James Nicholson, and having said deed explained to her by me, did then sign her name to said deed, and after being by me examined privately and apart from her said husband touching the same, did then acknowledge that she had voluntarily signed, sealed and delivered the same said annexed deed as her own act and deed for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In consideration whereof I have hereunto set my hand and seal of the County Court of said county, at office in the town of Bastrop, this the 13th day of June, A. D. 1851.

WILLIAM DUNBAR,
Clerk C. C. B. C.

A true copy of the original filed at 2 o'clock, P.M., June 13th, 1851. Recorded at 9 o'clock, A.M., the 14th June, 1851.

WILLIAM DUNBAR,
Clerk C. C. B. C.

I, William Dunbar, clerk of the County Court in and for said county, do hereby certify that the foregoing deed and certificates of acknowledgment are true copies of the originals, recorded in the county clerk's office, in Bastrop Co., in book H. of Deed Record, page 39 and 40.

I have hereunto set my hand and seal of Bastrop County Court, this the 25th of June, A. D. 1853.

[SEAL.] WILLIAM DUNBAR,
Clerk C. C. B. C.
By CICERO NASH,
Deputy.

Exhibit C.—Amended Bill.

The State of Texas, County of Bastrop.

Know all men by these presents, that I, James Nicholson, of the county aforesaid, for and in consideration of one hundred and fifty dollars of lawful money of the United States, to me in hand paid, the receipt of which is hereby acknowledged, have bargained, sold and conveyed, and do by these presents bargain, sell and convey unto Thomas C. Moore, of the county and State aforesaid, a certain tract of land lying and being in the town of Bastrop, known as fractional lot or block No. 4, for east of Main street, known and conveyed as such on the map or plot of said town as the property of Charles Strickland, and conveyed to me by a deed dated and of record in the county clerk's office, book page .
To have and to hold unto the said Thomas C. Moore, his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, administrators to warrant and forever defend all and singular the said premises unto the said Thomas C. Moore, his heirs and assigns, against every person whomsoever claiming or to claim the same, or any part thereof.

Witness my hand and seal (using the scrawl for seal), June thirteenth day, A.D. 1851.

JAMES NICHOLSON. [SEAL.]

Note the words "known," "certain tracts of land," interlined before signing.

Signed, sealed and delivered
in presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

I, R. H. Nicholson, do hereby relinquish all right, title and interest to the property contained in the foregoing annexed deed, bearing date June 13th, 1851.

R. H. NICHOLSON. [SEAL.]

In presence of
A. B. HEMPHILL,
L. D. HILL.

The State of Texas, County of Bastrop.

Before me, the undersigned, clerk of the County Court in and for said county, personally appeared James Nicholson, to me well known, and in my presence signed the foregoing annexed deed, and acknowledged that he signed, sealed and delivered the said deed for the consideration and purposes therein contained.

[REC. CCXXXI. D. T. 1860.]—3

Likewise, at the same time and place, before me, the said clerk, personally appeared R. H. Nicholson, wife of the said James Nicholson, and after having the said deed read and explained to her by me, did then sign her name to said deed, and after being by me examined privately, separate and apart from her said husband touching the same, did then acknowledge that she had voluntarily sign, seal and deliver said annexed deed as her own act and deed for the consideration and purposes therein contained, and wished not to retract the same for any consideration whatever.

In testimony whereof, I have hereunto set my hand and seal of the County Court of said county, at office in the town of Bastrop, this 13th day of June, A.D. 1851.

WILLIAM DUNBAR,
Clerk C. C. B. C.

A true copy of the original on file at 2 o'clock P.M., June 13th, 1851. Recorded at 8 o'clock A.M., June 14th, A.D. 1851.

WILLIAM DUNBAR,
Clerk C. C. B. C.

I, William Dunbar, clerk of the County Court in and for said county, do hereby certify that the foregoing deed and certificates are true copies of the originals, recorded in the clerk's office in Bastrop, in book H, of Deed Record, page 38 and 39.

Given under my hand and seal of Bastrop County Court, this June 25, 1853.

[SEAL.] WILLIAM DUNBAR,
Clerk C. C. B. C.
By CICERO NASH,
Deputy Clerk.

And afterwards, to wit, on the fifth day of September, in the year of our Lord one thousand eight hundred and fifty-three, the said defendants, by their solicitors, I. A. & G. W. Paschal, entered their appearance at the September rules, in words to wit:

Appearance.

Austin District, September Rules, 1853, 5 September.

HENRY SHELDEN & Co.
v.
MOORE & NICHOLSON. } In Chancery.

The defendants, Thomas C. Moore and James Nicholson, enter their appearance in this cause.

I. A. & G. W. PASCHAL,
Solicitors for Defendants.

And afterwards, to wit, on the third day of October, at rules, in

the year 1853, the defendants, by their solicitors, gave notice of the filing of their answer, in words to wit:

Notice of filing Answer.

October Rules, Oct. 3d, 1853.

HENRY SHELDEN & Co.
v.
MOORE & NICHOLSON.

The defendants, Thomas C. Moore and James Nicholson, file their answer.

GEO. W. PASCHAL.

Answer of Nicholson.

And at the same time, the day and year last aforesaid, the said defendants, James Nicholson and Thomas C. Moore, by their solicitors, filed their separate answers in this cause, which answers are in words, to wit:

HENRY SHELDEN et als.
v.
JAMES NICHOLSON and THOMAS C. MOORE.

In the United States District Court, District of Texas.

The separate answer of James Nicholson to plaintiff's bill of complaint exhibited against himself and Thomas C. Moore, in the United States District Court, exercising jurisdiction in and for the State of Texas, in chancery.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is or are material for him to make answer unto, this defendant answering saith, that it is true that he was indebted to the complainants on or about the 13th day of March, A.D. 1851, in the sum of ten thousand six hundred and ninety-one dollars and sixty cents, or thereabouts; and is also true that he executed his note on the 30th day of September, A.D. 1851, to the complainants for the said sum, payable one day after date. And this defendant admits that it is also true that suit was instituted against him by the complainants in the District Court of Bastrop County; and that at the fall term, A.D. 1852, they obtained a judgment against him for the sum of eleven thousand six hundred and sixty-one dollars and four cents for their principal debt and interest, and the further sum of eight dollars and

seventy cents, costs of suit; and that execution issued thereon, and that the same was returned "no property found." This defendant further answering says, that it is true that he was largely indebted after he became indebted to the complainants, and before the execution of the note aforesaid to the complainants, to wit, in or about the sum of fifteen thousand dollars, including the debt due to the complainants. This defendant says that he had, at that time, the remainder of his stock of goods on hand, but that they did not amount, at the cost rates and expenses, to the sum of eighteen thousand dollars, but at cost rates and expenses the amount would not exceed

The defendant further admits that he sold the remainder of said stock of goods to said Thomas C. Moore, his co-defendant, but denies that he sold to said Moore at that time any real estate of any description, or that any real estate was connected in any manner or form with the sale of said goods. And this defendant further admits that, at the time of said sale to said Moore, he was embarrassed and unable to meet promptly his debts, but he believes that he could have paid off with his means on hand and discharged every debt he owed, if his creditors had given him some indulgence; that he had property and effects sufficient to do so, but that he well that if his effects were seized and sacrificed, some of his creditors would lose their entire debt, which consideration induced him to make the sale as aforesaid, as well as the assignment, that all his creditors might be protected; that he felt perfectly satisfied that he transferred by assignment, for the benefit of all his creditors, means amply sufficient to discharge all his liabilities. This defendant expressly denies that said Moore ever advised him to make the sale of said goods, or suggested to him the propriety of so doing, and most positively denies the charge of fraud, or that there was the merest intention of defrauding the complainants, or any other person. This defendant also expressly denies that there was any collusion between said Moore and himself for the purpose of defrauding the complainants in manner as set forth in their bill of complaint, or that there was any understanding between himself and said Moore that they were to share the profits which might be made off of said goods; and also he denies that said Moore offered to take said goods at a discount of twenty per cent. upon New York cost, and that the said Moore acceded to the proposition, and the sale was made at that rate; and upon the consummation of the contract, he executed several notes, payable to some of the creditors of this defendant.

This defendant denies that, at the same time, he sold any lots to the said Moore situated in the town of Bastrop, but upon the consummation of the sale of said goods, wares, and merchandise, the said Moore executed his notes as aforesaid, amounting in the aggregate to about the sum of six thousand three hundred and ten dollars and thirty-five cents. This defendant further answering, admits that several days after the consummation of said sale, he asked said Moore

what course he had better pursue, when Moore suggested to him the propriety of making an assignment for the benefit of his creditors, which he did; but this defendant positively denies that the said Moore ever advised him to withhold any or either of said notes, executed as aforesaid, from the general surrender of his effects, and apply the same to his individual purposes; and he also denies that he ever did withhold any or either of said notes, and apply it or them to his individual use, or for that purpose, but he turned them over and transferred them all to his creditors. And he says that since the *the* assignment, he has paid over one thousand dollars on account of his old debts out of money which he has accumulated from his own labor, since the assignment aforesaid. And this defendant denies most positively that the complainants were hindered, delayed, or prevented in the collection of their debt against him because of any fraud or collusion between him and the said Moore as charged; and further he says, in reference to the market prices of said goods sold to said Moore, that, so far as he knows and believes, that is usual among the merchants of the town of Bastrop to mark their goods for retail at thirty-five per cent. above New York cost, and add thereon ten per cent. for charges of transportation. He denies that said goods sold to said Moore at retail, or otherwise, was worth the sum of twenty-seven thousand dollars. This defendant denies that he had no other visible means or tangible property besides that conveyed to said Moore. And this defendant denies that he was in failing circumstances at the time of the transfer and sale to said Moore of his said goods, wares, and merchandise; but says he could have paid all of his debts if his creditors had given him time to have made collections. And further he denies that said Moore's notes, executed for the purchase of said goods, were for less than the half of the first value thereof; and in reference to any secret understanding or contract between himself and said Moore, that they were to have the profits, "whatever profits should be made upon the said fraudulent purchase," this defendant pronounces to be absolutely false and untrue, as charged in complainant's bill. This defendant further answering says, that it is untrue that "there was no consideration passed from said Moore to said Nicholson for the two lots and improvements situated in the said town of Bastrop;" and he denies, as he heretofore has done, that there was any collusion between himself and said Moore to defraud the complainants, or his other creditors; and that said Moore did not advise him to withhold two five hundred dollar notes, executed to said Nicholson for said goods, from a general assignment for the benefit of his creditors shortly after said conveyance. This defendant says that it is untrue that he had no other property than that which he sold to said Moore; and he denies that he "preferred creditors in the assignment to more than the amount of the assets which were placed in the hands of the trustee appointed;" but says that he placed in the hands of the

trustee sufficient assets, if they had or can be collected, to discharge all and every debt he owes, though, as the assignment is not called in question, the defendant does not see the applicability of the charge.

This defendant, in answer to the interrogatories propounded to himself and his co-defendants, and himself alone, and contained in the complainant's said bill of complaint, says to—

Interrogatory 1st. The said Moore has never paid to him any portion of the profits made by him, said Moore, upon the said purchase.

To interrogatory 2d. This defendant does not know whether said Moore knew that this defendant was in failing circumstances at the time of the sale of said goods, lots, &c., to him, the said Moore. This defendant says that he informed said Moore that he was pressed and embarrassed for the want of money to meet his bills then due. He thinks that he informed said Moore, before the sale, that he was indebted to the complainants; that he purchased the greater portion of his stock from them, but did not know the amount of indebtedness to the complainants, as he had shipped them a lot of cotton to be placed to his credit, and had received no returns or accounts of sales. The said Moore did not know the amount of indebtedness to said complainants.

Answer to interrogatory 2d. This defendant says that the goods, wares, and merchandise, sold by him to said Moore amounted, at New York cost, to the sum of seven thousand eight hundred and *and* eighty-seven dollars and fifteen cents, to which he adds ten per cent. for costs and charges, making the sum of eight thousand five hundred and fifty-six dollars and ninety-two cents. He thinks the said goods sold by him to said Moore at retail ought to have been worth thirty-five per cent. upon New York cost and carriage, less the expenses of rents, clerks' hire, and expenses of sale; but at wholesale, such as he made to said Moore, he does not believe them to have been worth more than he received for them, to wit, the sum of six thousand three hundred and ten dollars and thirty-three cents; that he was willing to sell them to any one for that amount, and is satisfied that he could not have done any better, or sold them for a larger profit, at that time to a responsible person or persons.

And this defendant states, by way of answer to the complainants' amended bill, that the following is the history of the sale of said lots in the town of Bastrop: that on the 12th day of June, A.D. 1851, that said Thomas C. Moore, his co-defendant, purchased in good faith the said lots, paying therefor the sum of eight hundred and sixty dollars; that subsequent to said purchase, he, the said Nicholson, agreed with said Moore that the said lots might be repurchased at the same price for which they were sold, with interest on said sum from date of said sale. And further, this defendant states that the said lots were repurchased by his wife, Mrs. Nicholson, and suit was instituted at the spring term, A.D. 1853, before the District Court

of Bastrop county, to force his co-defendant, the said Moore, to reconvey said lots to said Mrs. Nicholson; and he is informed and believes that the court decreed that the said Moore should make good and sufficient title to said Rebecca H. Nicholson to said lots aforesaid, except to fractional block of lot number four (No. 4), east of Main street, and also one lot No. 95, east of Main street, which was redeemed and sold to pay a debt due from defendant, in said town of Bastrop, which said Moore is ready to do.

This defendant denies all, and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged; without this that there is any other motive, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, prove and maintain as this honorable court shall direct. And humbly hopes to be herein dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

SAYLES, BLANTON & ROSE,
GEORGE W. PASCHAL,
Attorneys for Defendants.

State of Texas, Bastrop County.

Personally appeared before me, William H. Ganett, chief justice of the County Court of Bastrop County, James Nicholson, who, being by me first duly sworn, deposes and says, that the facts, matters and things set forth in the foregoing answer, as of his own knowledge, are true, and those set forth as upon the information of others, he believes to be true.

Given under my hand, at office, in the town of Bastrop, [SEAL.] county and State aforesaid, this 22d day of September, A. D. 1853.

WILLIAM H. GANETT,
Chief Justice B. C.

Answer of Moore.

United States District Court. In Chancery.

The separate answer of Thomas C. Moore to the bill of complaint of Henry Shelden, Nelson Clements, and Edward A. Shelden, complainants, exhibited against the said Thomas C. Moore and James Nicholson in said court.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint con-

tained, for answer thereunto, or to so much and such parts thereof as this defendant is advised or are material or necessary for him to make answer unto, answering saith:

That it may be true that his co-defendant, James Nicholson, became indebted to the complainants, as by them stated, and he may have executed his note to them and they may have obtained judgment, and an execution may have been returned *nulla bona*, as by the complainants stated, but of all this defendant knows nothing, except what he has heard, which induces him to believe it is true, as by the complainants stated.

And it may be true that after the indebtedness of said Nicholson he was also indebted to others, but of this, this complainant knows nothing, and he may have been in possession of goods to the value of eighteen thousand dollars, but the defendant does not believe it. (And this defendant admits that on the seventh day of July, A. D. 1851, in the city of Bastrop, he purchased of the said Nicholson a lot of goods, but he positively denies that the said goods, wares and merchandise were of the value of eighteen thousand dollars, at the cost rates and expenses of transportation; on the contrary, this defendant says that the goods purchased by him, at the New York invoiced prices, amounted to seven thousand eight hundred and eighty-seven $\frac{85}{100}$ dollars, but said goods were originally invoiced at high prices, and many of them were unseasonable goods, were a broken stock, which had been culled by retail sale, and were not worth New York cost at Bastrop, and this defendant admits that it may be true, that at the time of the said sale of said goods by said Nicholson to this defendant said Nicholson was in failing circumstances, and unable to meet promptly his demands, but of the extent of his embarrassment this defendant then knew nothing; and he positively denies that he then had any knowledge of said Nicholson's indebtedness to the complainants, and he also positively denies that it was at this defendant's suggestion, and upon his advice, that his co-defendant made the transfer of said goods, wares and merchandise. On the contrary, this defendant says that the said goods were offered to this defendant by the said Nicholson after he had offered them in market to others; and the purchase was made by this defendant reluctantly, and the said trade was made in the utmost good faith, and not with the intention of defrauding the complainants or any other person. This defendant positively denies that there ever was any proposition for or understanding that this defendant should purchase said stock of goods at a discount of thirty per cent., and that whatever profits might be made upon said goods, by the defendant, should be shared between himself and said Nicholson. Nor is it true that at the time of said purchase the said Nicholson transferred to this defendant any town lots in Bastrop or elsewhere worth two thousand dollars or any other sum. A free answer to the lot transaction will be given in this defendant's answer to the amendment.

And this defendant denies that he gave said Nicholson, in consideration of said goods and lots, his notes for eight thousand dollars, or that he received property from the said Nicholson to the value of twelve thousand dollars, in fraud of the rights of complainants.

This defendant protests that his advice to said Nicholson has nothing to do with this controversy; but to the said impertinent statement this defendant says that after the said purchase of said goods he recollects that the said Nicholson applied to him to become his assignee, saying that he intended to make an assignment of his effects for the benefit of his creditors; and this defendant declined to act as assignee, and advised the said Nicholson to get some other person.

And this defendant positively denies that he ever advised said Nicholson to withhold two of this defendant's notes, for five hundred dollars each, from his creditors, and appropriate them to his own use. The charge is positively untrue; but if true, this defendant denies that complainant would have any legal grievances in consequence thereof.

This defendant denies all collusion and fraud with the said Nicholson, whereby the said complainants have been prevented from collecting their debts. This defendant cannot forbear to except to and urge as of demurrer the contradictory charges in the complainants' interlined and loosely drawn bill, with its interpolated amendments; the charge being, as this defendant understands it, first, that the goods were worth eighteen thousand dollars; secondly, that they and the lots were worth twelve thousand dollars; then, that they were actually worth twenty-seven thousand dollars.

But this defendant denies that said goods were worth fifty per cent., or any other per cent. on the first cost. This defendant, as complainants well know, could have made far better purchases on his own paper in New York, than to have bought them at cost; and he positively denies that they were worth twenty-seven thousand dollars, or any other such large sum; on the contrary, this defendant bought them for the sum of six thousand three hundred and ten dollars and thirty-five cents, which was their full value. This defendant does not know whether or not said Nicholson had any other visible means out of which said complainants could have made their debts. He has been advised and believes that large portions of his means have gone into the hands of the complainants' solicitors and other attorneys, and whose debts or what purposes they have been appropriated this defendant does not know.

This defendant protests that no rule of chancery practice requires him to answer the same charges repeated over and over again, as if the complainants expected to give plausibility to an oft-repeated untruth.

This defendant denies that at the time of the purchase of said goods, on the fifth of July, 1851, the said Nicholson conveyed to

this defendant, without consideration, and for the purpose of avoiding his creditors, the lots in the complainants' second amended petition described; and he positively denies that his purchase was made without a valuable and sufficient consideration. On the contrary, this defendant says, that said lots were before said purchase of said goods, to wit, on the twelfth (12) day of June, A. D. 1851, purchased by this defendant, and paid for in good faith. The facts of the transaction are as follows, to wit, on the 12th day of June, 1851, this defendant purchased the lots mentioned in the original and amended bill in good faith, for the sum of eight hundred and sixty dollars, all of which was paid in as a good faith; that subsequent to said purchase he agreed with his said co-defendant that the lots might be repurchased at and for the same money, with interest thereon at 10 per cent. per annum.

And further, that the said purchase-money was paid to him by Mrs. Nicholson, the wife of his co-defendant, and suit instituted at Spring term, 1853, of the Bastrop District Court, to force this defendant to reconvey the said lots to the said Mrs. Nicholson, and he is informed and believes that the court decreed this defendant should make good and sufficient titles to her to the said lots, except fractional lot of block No. 4, east of Main street, in said town of Bastrop, which this defendant is ready to do, and also lot No. 25 east of Main street, which was redeemed and afterwards sold to satisfy a debt due from said Nicholson, as he is informed and believes.

And now, in answer to complainants' first interrogatory, he says, that he gave his notes to said Nicholson for said goods to the amount of six thousand three hundred and ten dollars and thirty-five cents.

That one of said notes was executed to T. J. Gazley for five hundred and six dollars and thirty-eight cents; the other notes were executed to said Nicholson, and as he understands, they have been all transferred by said Nicholson to his creditors; that dollars of them have been paid and taken up; that one other, to the amount of eight hundred and ten dollars and eighteen cents, has been taken up, and a bill of exchange given therefor, which is now held by the complainants' solicitors or his partner, upon which they are urging payment, and that he does not owe any of said sum to said Nicholson. That the amount of goods received from said Nicholson, invoiced at New York prices, was seven thousand eight hundred and eighty-seven dollars and sixty-five cents; but this defendant denies that this was a fair estimate of the New York prices for such goods at that time, for they were generally charged (particularly when sold by the complainant) at some twenty per centum over the New York prices.

This defendant declines to answer the third interrogatory, as he has advised the complainants have made no charge which require it. He is ready to produce his invoice of purchase whenever and wherever the court shall direct upon proper charge. For the same reason this

defendant declines to answer the fourth interrogatory. He is not aware of any allegation in the bill which requires it.

And to the fifth interrogatory he answers that he never has paid any part of the profits to said Nicholson.

This defendant denies all, and all manner of unlawful combinations and confederacy wherewith he is by said bill charged, without this that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAYLES, BLANTON & ROSE,
and GEORGE W. PASCHAL,
Attorneys for Defendant.

The State of Texas, Bastrop County, *ss.*

Personally appeared before me, William H. Garrett, chief justice of the County Court of Bastrop County, Thomas C. Moore, who being by me first duly sworn, deposes and says that the facts, matters, and things stated and set forth in the foregoing answer, as of his own knowledge, are true, and those set forth as upon the information of others he believes to be true.

Given under my hand and seal of office, at office in Bas-
[SEAL.] trop county and State aforesaid, this 22d day of September A.D. 1853.

WILLIAM H. GARRETT,
Chief Justice, B. Cy.

And afterwards, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-three, the said complainants, by their solicitor F. W. Chandler, filed an application for leave to amend their bill in this cause filed, supported by affidavit, which application and affidavit are in the words and tenor following:

Application for leave to amend.

District Court of the United States, District of Texas, at Austin.

HENRY SHELDEN & Co.
v.
MOORE AND NICHOLSON. } In Chancery.

The complainants ask leave of the court to file an amendment to their bill, and among other things to make Mrs. Nicholson a party

defendant thereto, said amendment to be filed on or before the next rule day; and in support of this application complainants refer, if necessary, to the accompanying affidavit.

F. W. CHANDLER,
Solicitor for Complainants.

Upon which application is the following indorsement, to wit:

Notice accepted.
SAYLES, BLANTON & ROSE,
and G. W. PASCHAL,
Defendants' Solicitors.

Affidavit.

In the United States District Court at Austin.

HENRY SHELDEN & CO.
v.
MOORE AND NICHOLSON. } In Chancery.

F. W. Chandler, solicitor for complainants, on oath says, that the defendants filed their separate answers at the rule day in November last; that said answers refuse to answer material interrogatories on the ground that the averments of the bill do not lay the basis for said interrogatories; and said answers further disclose the fact that the greater number of the town lots sought to be reached in the hands of defendant, Moore, by complainants' bill, have been recovered from him by Mrs. Nicholson, the wife of the other defendant, thus showing the necessity, not previously known, of Mrs. Nicholson as a party to said bill.

That complainants' solicitors were compelled to be absent during the greater part of the time from the filing of said answer, until after the last rule day, and was besides not acquainted with the rules of court respecting amendments. That amendment making Mrs. Nicholson a party as aforesaid is absolutely necessary to have proper parties before the court, and that the other amendments are deemed material to the justice of the case.

F. W. CHANDLER,
Attorney for Plaintiffs.

Sworn to and subscribed before me this 22d day of December, 1853.

W. P. DE NORMANDIE,
Clerk.

And afterwards, to wit, on the twenty-ninth day of December, A.D. 1853, the complainants by their solicitors filed an amendment to their original bill, which amendment is in words to wit:

Amendment to Bill.

The United States of America, District of Texas.

Amendment to the original and amended bill of complaint of Henry Sheldon, Nelson Clements, and Edward A. Sheldon, formerly merchants and partners under the firm name of Henry Sheldon & Company, complainants, against James Nicholson and Thomas C. Moore, defendants, in the District Court of the United States for the District of Texas, at Austin. Leave of the court having been first obtained, your orators, by way of amendment to their said original and amended bill, further show, that the said defendant Moore received from said defendant Nicholson, and now has in his possession or under his control, the original invoices of the goods purchased in whole or in part by him from said Nicholson, which said invoices were made in New York by the merchants from whom said Nicholson purchased said goods. That said invoices are material and necessary in order to show the cost of said goods, and will sustain the averments of your orators in relation to the said cost in their original bill. That if said invoices are not in the possession or control of said defendant Moore, they are in the possession or control of his co-defendant Nicholson; and your orators require that the same be annexed to the answer of said defendants, or the defendant holding or controlling the same.

Your orators further show that said goods have been long since sold by said Moore at a profit of fifty per cent., or near that amount, over and above the New York cost and charges, and expenses on the same to Bastrop.

Your orators further show that the real estate or town lots in the town of Bastrop, mentioned and sought to be reached in the original and amended bill, and more particularly specified and described in the answers of the defendants, or the greater part thereof, have been redeemed or repurchased from said Moore by Mrs. Rebecca H. Nicholson, the wife of the defendant James Nicholson, and a decree or judgment of the District Court of Bastrop county obtained by her against said Moore for the conveyance to her of said town lots (D.). That the intervention of the said Rebeccah in the matter was and is with the further design of hindering, delaying, and defrauding your orators and the other creditors of the said James Nicholson, by vesting the pretended title to said property *to said property* in her.

Your orators expressly deny that the pretended sale of said lots to said Moore was bona fide or an absolute sale, or that any real and sufficient consideration passed therefor; and they aver that the resort to a suit, and obtaining a decree for the same by the said Rebeccah, was collusive and fraudulent, and for the purpose of giving color to her pretended title; and that in fact no new, actual, and sufficient consideration passed for the pretended conveyance to her. That if

any such consideration did in fact pass, the purchase or redemption being in the name of the said wife does not exempt the said lots from liability to and for your orators' debt and judgment, and they pray that the same be declared subject thereto, and ordered to be sold in satisfaction thereof. They further show, that should it appear that said Moore held the said lots by way of mortgage from said Nicholson, and that said Rebeccah redeemed the same, your orators in any event will have the right to claim a sale of said lots for their benefit, subject to said incumbrance, or to redeem the same; and they pray this alternative relief, should it appear at the hearing that they are not otherwise entitled to satisfaction out of said lots.

Your orators submit the following interrogatories to said defendants Moore and James Nicholson:

1st. That you annex to your answers all the original invoices made in New York of the goods, part stock of which was purchased by said Moore of said Nicholson.

2d. That you annex to your answer the account or invoice of all the goods, wares, and merchandise purchased by said Moore of said Nicholson. Is the same the original account or invoice made at the time of the said purchase? Was it made subsequent to the said purchase, and how long subsequent? and whether subsequent to the making of any prior or original account or invoice? If the last, where is said prior or original account or invoice? and in what particulars does the one annexed to your answer vary from that? State fully and specifically.

3d. Annex to your answer the deed from said Nicholson to said Moore for said town lots, and also the deed or agreement for the repurchase of the same, which are referred to in the answers of defendants. Was there any other agreement, contract, or indenture between you or by either of you respecting said lots or any of them? If so, annex the same to your answer. If you cannot annex the documents called for in this interrogatory, state why not.

Your orators pray that the said Rebeccah H. Nicholson, who is a citizen of the State of Texas, residing in said county of Bastrop, be made a party defendant to this suit; but they waive any discovery or answer under oath from her.

They pray for relief as in their original and amended bill; and that the title of the said Rebeccah H. Nicholson to the said town lots in the town of Bastrop be declared fraudulent and of no effect as against the rights of your orators, and that the said town lots, with the appurtenances and improvements, be decreed by your honor to be sold in satisfaction of the said judgment of your orators; or that, by way of alternative relief, should it appear that the said Moore held the said lots by way of mortgage, and that the redemption of the same was a bona fide transaction, and that the amount paid therefor is a valid incumbrance in favor of said Rebeccah H. Nicholson, as against your orators, that the said lots be decreed to

be sold subject to said incumbrance, or that your orators be permitted to redeem the same, as may be according to equity and the practice of your honorable court.

May it please your honor to grant unto your orators a writ of subpœna, issuing from your honorable court, directed to the said Rebecca H. Nicholson, thereby commanding her, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your honor in this honorable court, and then and there, full, true, and direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide, such further order, direction, and decree therein, as to your honor shall seem meet. And your orators shall ever pray, &c.

HAMILTON, CHANDLER & W. P. BALLINGER,
Solicitors for Complainants.

Consent to Filing.

Indorsed on the amended bill is the following consent to the filing:

"Consent is given to the filing of the within amendments, the complainants to furnish me a copy of said amendments, Dec. 27, 1853.

GEO. W. PASCHAL,
For Defendants."

And further indorsed in words, to wit:

"The defendants shall have until the rule day, in March, to file their answer.

CHANDLER, HAMILTON & BALLINGER,
For Complainants.

Of Subpœna and Service—Rebecca H. Nicholson.

And afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and fifty-four, a subpœna in due form was issued from the clerk's office of said District Court, which subpœna was duly served, returned, and the appearance of the defendant, Rebeccah H. Nicholson, duly entered at the May rules, as will hereafter and at large appear.

Separate Answer of J. Nicholson.

And afterwards, to wit, on the 26th day of February, A. D. 1854, the defendant, James Nicholson, filed his separate answer to the foregoing and amended bill, which answer is in words to wit:

United States of America, District of Texas.

The separate answer of James Nicholson to the amendment to the bill of complaint exhibited against this defendant and Thomas C. Moore, in the District Court of the United States.

This defendant, now and at all times saving and reserving to himself all benefit of exceptions, &c., &c., as in his answer to the original bill, for answer says:

This defendant says that it is not true that his co-defendant Moore received from this defendant the original New York invoices of this defendant. The goods sold by this defendant to said defendant Moore, were the remnants and unsold goods running through the invoices of several years: and it would be very hard to select and arrange the invoices so as to show precisely what goods were sold. As soon as this defendant can have access to his papers and get them arranged, he will bring into court and file such of his original New York invoices as he has on hand, and will duly mark the same as a part of his answer.

This defendant says that it is true that at the time of his sale of his remaining stock to his co-defendant, Moore, there was made out and furnished to said Moore an account or invoice of said sale, the amount of which sale at the cost in New York was given in the original answer of this defendant. The original invoices were sometimes referred to when desired, and sometimes the private mark of this defendant of the cost price of the goods was alone consulted. This defendant charged the amount of sales in his books, but kept no copy of the invoice furnished said Moore, and cannot now annex it to his answer. The invoice would not sustain the allegations in the complainants' original bill as to the cost of said goods.

This defendant cannot say whether or not said goods have been sold by said Moore at a cost of over fifty per cent. on New York cost.

This defendant cannot say whether or not said goods have been sold by said Moore at a cost of over fifty per cent. on New York cost.

This defendant refers the complainants to the record evidence referred to by them in the Bastrop District Court, in regard to said lots. This defendant denies that the intervention of his wife was for the purpose of hindering, delaying, and defrauding the complainants and the other creditors of this defendant; on the contrary, it was an intervention for the purpose of in good faith securing the separate property of the said Rebeccah, so purchased in good faith by the said Rebeccah from said Moore with her own means. This defendant says that when he married the said Rebeccah she was a widow, having a considerable amount of separate means and money belonging to herself and to her child by a former husband; that from time to time she loaned him these means to aid in carrying on his business, until the amount exceeded five hundred dollars; that after the sale of said goods this defendant, in payment of said borrowed money, transferred one of Moore's notes for five hundred dollars to her, and with it and other of her separate means she purchased said lots from said Moore.

This defendant in fact says, that in regard to said lots, some time in 1848 or 1849, and while this defendant was in good circumstances, he purchased said lots from Samuel Wolfenberger for the father of this defendant; that the only reason why this defendant did not take the deed in his father's name, was because he was an alien; that this defendant's father has ever since that time occupied the said place as a homestead; that this defendant bought it for him as a homestead for his lifetime; that the old gentleman, with his labor and hired labor, has made improvements upon said property of no great value; that his father still occupies said property under an arrangement with defendant's wife that she should repurchase the property from said Moore, and permit this defendant's father to occupy it during his lifetime.

The arrangement between the co-defendant, Moore, and this defendant's wife, was not a mortgage, but a purchase in good faith, and an arrangement in which some of the creditors of this complainant, who had levied upon the property, concurred.

This defendant has no claim upon said lots, but refers to the original answer and records concerning the same.

This defendant has already answered the first and second interrogatories; the third he is not bound to answer, further than he says: there were no deeds in regard to the matter but such as are of record, and no other agreement but such as he has disclosed.

Without this, that there is any other matter or thing not herein admitted, traversed, or denied, is true; and this defendant, having fully answered, prays to be hence discharged, with his reasonable costs.

JAMES NICHOLSON.

United States of America, District of Texas.

Before the undersigned, James A. Poage, a commissioner of the United States for the District of Texas, personally appeared James Nicholson, who being duly sworn says, that the facts in the foregoing answer are true in substance and in fact.

Subscribed and sworn to before me, this 22d day of March, 1854.

JAMES A. POAGE,
Commissioner, &c.

Answer of T. C. Moore.

And thereupon, to wit, on the day and year last aforesaid, the said defendant, Thomas C. Moore, filed his separate answer in this cause, by his solicitor, in the words and of the terms following, to wit:

United States of America, District of Texas.

The separate answer of Thomas C. Moore, to the amendment to the bill of complaint, exhibited by Henry Sheldon & Co., complain-

ants, in the United States District Court, against this defendant and James Nicholson, defendants.

This defendant, now and at all times, saving and reserving, &c., &c., as in his original answer, says: that it is not true that this defendant received from his co-defendant, Nicholson, and now has in his possession, or under his control, the original invoices of the goods purchased in whole or in part by him, said Nicholson, in New York, which invoices were made out by the merchants in New York, from whom said Nicholson purchased goods. No such invoices were ever delivered to this defendant; nor did this defendant ever see all the invoices of said Nicholson. The goods which this defendant purchased had been purchased at different times; some of them were an old supply, which had been on hand a long time, and for which his co-defendant showed this defendant no invoices, but only his cost-mark and other data of the cost.

This defendant does not know whether all or any part of said invoices are now in the possession of said Nicholson or not.

This defendant admits that about the time of his said purchase of said goods by this defendant and from his co-defendant, an account or invoice of his said purchase of goods, &c., was made out by the said Nicholson, and was delivered to this defendant.

That said invoice was delivered to one of his solicitors, S. C. Blanton, when this defendant's answer was being prepared, and from the same the amounts set forth in his original answer were stated. This defendant has made diligent search for said invoice, and as soon as the same can be found—if it has not been lost or mislaid by his solicitor—this defendant will file the same, and no other, as an exhibit to his answer.

This defendant denies that said goods have been long since sold by him at a profit of fifty per cent., or near that amount, over and above New York cost and charges and expenses on the same to Bastrop; on the contrary, this defendant says that he sold a great part of them for no more than they cost him; and after deducting trouble and expense of buying and selling, rents, risk in the nature of insurance and loss, the profits were not worth a dispute. He could have done better with new goods.

But if even he had sold the goods at a profit of over fifty per cent. on New York cost, the fact could form no reason why a purchase made in good faith should be set aside: and this defendant claims all the benefits of a demurrer to this part of complainants' bill.

This defendant further answering, says, that the town lots purchased by this defendant from said Nicholson, were not redeemed, but repurchased from this defendant by Mrs. Nicholson, but whether with her own funds or not, this defendant does not know, only as he was assured that they were so purchased from this defendant with the separate funds of said Rebecca; this assurance was made by

said James Nicholson. In this matter, however, this defendant has no interest, and prays to be hence discharged.

This defendant cannot see the force of the denial of said complainants that said sale by him was *bona fide*, nor does he know that it is their office to "deny" the answers of this defendant.

The sale was in good faith, and for a valuable consideration paid to this defendant; all the facts about which have been stated by this defendant. As to the resort to judicial proceedings, this defendant had not intended any collision with any one. He was paid for his title, and he no claim whatever to the property.

This defendant has hereinbefore and in his answer to the original bill, as fully answered, the first and second interrogatories in the complainants' amended bill.

As to the third interrogatory, there are no charges which require him to answer said interrogatory.

Without this, that there are any other matters or things in said amendment not herein admitted, traversed, or denied, is true.

And this defendant having fully answered, prays to be hence discharged, with his reasonable costs.

THOS. C. MOORE.
GEO. W. PASCHAL,
S. C. BLANTON,
Solicitors.

United States of America, District of Texas.

Before me, the undersigned, James A. Poage, a commissioner of the United States for the District of Texas, personally appeared Thomas C. Moore, who on oath says, that the facts set forth in the foregoing answer are true in substance and in fact.

Subscribed and sworn to before me this 25th day of March, 1852.

JAMES A. POAGE,
Commissioner, &c.

And afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and fifty-four, an entry was made in said cause, in the words and of the tenor following, to wit:

Entry at Rules. Appearance. Rebecca H. Nicholson.

May Rules, 1854. May 1st, 1854.

HENRY SHELDON & Co.
v.
JAMES NICHOLSON and others } In Chancery.

The defendant, Rebecca H. Nicholson, by an arrangement with the counsel of complainant, enters her appearance, and files her answer this day.

GEO. W. PASCHAL,
Solicitor pro defendant.

And thereupon, to wit, on the day and year last aforesaid, the said defendant, Rebecca H. Nicholson, by her solicitors, filed her answer in this cause, in the words and of the tenor following, to wit:

Answer of Mrs. R. H. Nicholson.

HENRY SHELDON & Co.
v.
JAMES NICHOLSON and others

In the District Court of the United States for the District of Texas.

The separate answer of Rebecca H. Nicholson, one of the defendants to the above entitled cause.

And the said Rebecca H. Nicholson, saving and reserving unto herself all manner of exceptions to the many uncertainties and imperfections contained in the complainants' bill of complaint, or so much thereof as she is advised is material for her to make answer unto, for answer to said bills says, that she admits *that she admits* that she is the wife of her co-defendant, James Nicholson. That when she intermarried with her said husband, she had in ready money about the sum of one thousand dollars of her own separate property. That her said husband informed her that he was much pressed for some ready money, and agreed with her to give her in pledge two promissory notes on her other co-defendant, Thomas C. Moore, not then due, for about the sum of five hundred dollars each, for the use of her ready money as aforesaid.

And this defendant further answering says, and alleges, that she did give to the said James Nicholson the use of her said money, and took in lieu thereof the said promissory notes of the said Moore. She does not remember distinctly when she made the arrangement, but thinks it was some time during the year 1849 or 1850; and that it was some time afterwards that she surrendered to the said Moore the said notes in discharge of a mortgage, which said Nicholson had before that time executed to him on the lots mentioned in complainants' bill and amended bill.

And this defendant further says, that the said Nicholson never paid her any part of the said sum which she advanced him from her own separate property and private funds, as aforesaid; and further this defendant says, that the whole and only amount which she has realized from said advancement is the lots mentioned.

This defendant admits that a decree was rendered in her favor by the District Court of Bastrop County, at the fall term thereof, 1853, compelling the said Moore to make her a deed, conveying a good and perfect title to said lots to her; and further this defendant says, that her only chance and hope for any kind of indemnity for her advancement to her said husband as aforesaid, is the lots aforesaid, because she says and charges that the said Nicholson is hopelessly

and entirely insolvent, and that she has no security from any other source, and that the said lots will not exceed in value the said sum advanced.

And this defendant for further answer to the said complainants' original and amended bill, denies expressly all and all manner of collusion and fraud as between herself and co-defendants, or either of them, or any other person or persons, and all intention or participation in hindering, delaying, or defrauding the complainants, or any other person or persons in the security or collection of the debt or debts sued for and demanded by the complainants.

And now having fully answered, this defendant prays to be discharged with her reasonable costs, and for all other and further relief, to which she may be entitled, and as in duty bound she will ever pray, &c.

PASCHAL & BLANTON,
Sols. for Defendant.

State of Texas, County of Harris.

Personally appeared before me, T. B. Hadley, commissioner to take affidavits, &c., by the District Court of the United States, at Galveston, Mrs. Rebecca H. Nicholson, who being duly sworn says, that the matters and things set forth in the foregoing answer, which she states of her own knowledge, are true, and those she states from the information of others, she believes to be true.

R. H. NICHOLSON.

Sworn to and subscribed before me this 14th April, 1854.

T. B. J. HADLEY,
C. A. D. C. U. S.

And therefore afterwards, to wit, on the eleventh day of December, in the year of our Lord one thousand eight hundred and fifty-four, the complainants in this cause filed their replication to defendant's answer, in the words and of the tenor following, to wit:

Replication of Complainants.

HENRY SHELDON & Co., plaintiffs,
v.
JAMES NICHOLSON et al., defendants.

United States District Court, District of Texas.

The plaintiffs in this cause hereby joins issue with defendants, James Nicholson, Thomas C. Moore, and Rebecca H. Nicholson, and will hear the cause on bill, answer, and proofs against the said defendants.

HAMILTON, CHANDLER & CO.
Attorneys for plaintiffs.

And thereupon, afterwards, to wit, on the trial of said cause at the November term of said court, in the year of our Lord one thousand eight hundred and fifty-five, the following interrogatories and cross-interrogatories, with the answers thereto, were read in evidence in said cause, being the depositions of the witnesses therein named, taken before an United States commissioner, under and in pursuance of the following agreement.

United States District Court, Austin, Texas, between

HENRY SHELDON & Co., complainants,
v.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, defendants.
} In Chancery.

Agreement as to taking Testimony.

It is agreed in this case that the parties mutually waive the fact, that the cause has not been put at issue; and that the same may be put at issue at the next rule day hereafter.

Further agreed, that the answers of the complainants' witnesses, Thomas J. B. Hill, Warren Larkins, and others, to the interrogatories and cross-interrogatories, and of the defendant's witnesses, Hiram Gillespie and others, to the interrogatories and cross-interrogatories, may be taken with like effect as though the cause was at issue.

Agreed that said witnesses may be examined before James A. Poage, commissioner, upon the original interrogatories with the same effect as though a special commission had issued.

GEO. W. PASCHAL,
Pro defendants.

HAMILTON & CHANDLER,
Solicitors for complainants.

AUSTIN, 9th June, 1854.

District Court of the United States, District of Texas, at Austin.
Between

HENRY SHELDON & Co., complainants,
and
JAMES NICHOLSON and REBECCA NICHOLSON, and THOMAS C. MOORE, defendants.
} In Chancery.

Interrogatories to be exhibited to Thomas J. B. Hill, Warren Larkins, George W. Jones, Robert A. Rutherford, William Dunbar, C. C. McGinnis, C. K. Hall, William T. Gamble, Robert H. Hall, Jacob C. Higgins, and Samuel Porter, Esq., witnesses, residing in the county of Bastrop, State of Texas, to be produced, sworn, and examined in a certain cause now depending and at issue in the District Court of the United States for the District of Texas, at Austin, in

Chancery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon, are complainants, and James Nicholson and Rebecca H. Nicholson, his wife, and Thomas C. Moore, are defendants, on the part and behalf of the above-named complainants.

Interrogatories to Samuel Porter.

Interrogatories to Samuel Porter, a witness residing in the county of Bastrop, State of Texas, for the complainants in the above cause.

First. Are you or not acquainted with the parties, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant, James Nicholson, to the defendant, Thomas C. Moore, about the summer of the year 1851? If so, what amount of the stock of said Nicholson was so sold, whether the whole or some, and what part thereof? At what price above or below New York cost and charges to Bastrop were they sold; and where did said Nicholson and Moore reside at the time? In whose and what employ were you?

Third. What were the pecuniary circumstances of said Nicholson at the time of said sale, whether solvent, failing, or in what condition? What knowledge, or means of knowledge, or information thereof had said Moore, and state how you know the same? Did you or not before or about the time of said sale hear said Nicholson state in the presence of said Moore, the condition of his pecuniary affairs, his ability to pay his debts, the cause of his selling said stock of goods; whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like character? If so, state all that he said on those subjects respectively, and the time, place, and circumstances of the conversation?

Fourth. Were the said goods delivered in the day or night? Were the windows and doors open or shut at the time? Was or not any invoice or account of said goods taken or completed at the time of the delivery? Did you hear any reasons given therefor, or for the time and manner of the delivery by said Moore and Nicholson, or either, and which of them, and in the presence of the other? Who was present when said goods were turned over?

Fifth. State whether or not said Nicholson was in failing circumstances at the time he made said sale, and whether or not the defendant Moore, had any knowledge of the defendant Nicholson being in failing circumstances at the time of said sale. State all you heard the defendant Nicholson say before and at the sale of said stock of goods in the presence of the defendant Moore about his being unable to pay his debts, and the cause of his selling his entire stock of goods. State all that you heard the defendant Moore say before the sale of said goods, and for six months thereafter, relative to his knowledge of defendant Nicholson being in failing circumstances, or deeply in-

volved in debt, at the date of his purchase of said goods from him, Nicholson. State all the defendant Nicholson said to the defendant Moore, or in his presence before the sale, or during the progress of the same, or during the time of taking an invoice of the goods sold, relative to his being indebted to complainants, and as to his intention of paying the same. State all said Nicholson said in the presence of, or to said Moore, about his selling his property to prevent complainants from making it liable for their debts. When were the goods delivered by defendant Nicholson to defendant Moore? Was it in the day or night time? Who was present at the time of such delivery? In what county and town did the sale and delivery take place? Were the doors and windows open or shut at the time the goods were turned over by Nicholson on to Moore? Had the goods been invoiced or an account taken of them at the time they were delivered to Moore? If nay, what reason was given by said Nicholson and Moore, or either of them, in the presence of the other for the delivery of said goods in the night time, and before they were invoiced?

Sixth. Did you or not, previous to or at the time of said sale, or of taking an account of said goods, make any statement to, or in the presence of said Moore, in regard to the pecuniary circumstances and condition of said Nicholson, or his ability to pay his debts or his indebtedness to complainants, or his intentions as to paying complainants; if so, state all of such conversation, and the time, place, and circumstances fully?

Seventh. Did you, or not, ever have any conversation with the said Moore, before or about the time of said sale, in regard to any indebtedness of said Nicholson to complainants? If so, state the same fully. Did or not the said Moore speak to you about remaining in the store if he purchased said goods? If so, please state all he said to you, at or about that time, respecting any of the matters in relation to which you have been interrogated, or any other matters connected with this suit.

HAMILTON & CHANDLER,
Solicitors for Complainants.

Cross-interrogatories to Samuel Porter.

Cross-interrogatory 1st. If you say you know of a sale of the stock of goods of the defendant Nicholson to the defendant Moore, then say if you do not recollect that all the stock were not sold, but that Warren Larkins purchased a portion for some creditor after the invoicing commenced?

Cross-interrogatory second. Say if you do not know that the defendant Nicholson was not at the time indebted to the defendant Moore, and, if so, for how much? and did not such indebtedness form a part of the consideration of said purchase? and if you speak of Moore knowing of any other indebtedness of Nicholson, say if

Moore had any knowledge of who the creditors, of how much, or any personal acquaintance whatever with the defendant Nicholson's creditors, the plaintiffs?

Cross-interrogatory third. Say if you had not been for some time, and how long, the clerk of Nicholson? and say whether the stock of goods were not many of them old and unsaleable? Whether they were not the remnants of many years invoices, and such as would not sell unaided by new supplies? and would not many of them been a dear bargain at cost?

Cross-interrogatory fourth. Say if you did not aid in making up the invoice of said goods, and, if so, if they were not invoiced at New York costs, as near as you could possibly ascertain from the cost-marks and the invoices on hand and accessible? And in arriving at the amount of sale, did you not deduct off or add on the per cent. charged above or below the New York cost? And was not this done upon a fair invoice? And now say, if, considering the quality of the goods, their staleness, their condition, the manner in which they had been culled, the state of the market, Moore did not pay all that they were worth, as compared with other new goods about that time brought into the Bastrop market? And say if the stock would not have been wholly unsaleable by Nicholson without adding to it? And could Moore have paid the necessary rents and clerks' hire, and sold said stock of goods so as to cover the cost he gave for them, and the usual profit, without adding to the stock and taking the risks of an entire business?

Cross-interrogatory fifth. Say if you remained as clerk with the defendant Moore while he was selling those goods? Say if he purchased new goods and mixed with his stock; and if so, did not said additions add to the facility of selling those purchased of Nicholson? and say if you know of any of those goods having been sold to any person, and whom, at wholesale; and if so, did you not sell them at the same price Moore purchased them, and did you not consider said sale a good one? say to whom, and what amount, and had not the purchaser the offer to take all the goods so purchased of Nicholson? Say if you made up the invoice to Hall, and at what rate were the goods charged? and of those not sold to Hall, say how long some of them remained on hand, and were they not forced off, and some of them given away?

Interrogatory sixth. Were not Nicholson's New York invoices, and particularly those of Sheldon & Co., usually charged very high.

Interrogatory seventh. Say whether or not Moore was not a man of fortune, who had or might easily have obtained credit in the wholesale market for goods, and thus have bought a stock which he could have sold at a better profit than those purchased of Nicholson? Would you have considered it possible, as a merchant, for you to have taken Nicholson's old stock at cost, and after paying rents, clerk's hire, and every necessary expense, to have cashed them, and

made a living profit? Give your opinions, your reasons, and your experience as a salesman.

S. C. BLANTON,
GEO. W. PASCHAL,
Solicitors for Defendants.

Interrogatories to Warren Larkins.

Interrogatories to Warren Larkins, a witness, residing in the county of Bastrop, State of Texas, in same cause, for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson, to the defendant Thomas C. Moore, about the summer of the year 1851; if so, state the amount of said goods? where did the said defendants reside at that time? where did you reside?

Third. State what was the general reputation of the said Nicholson in the community (if you know) where he lived, as to solvency, and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore, previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property; if so, state as near as you can, the time or times of such conversation; and state fully and particularly all that you said to said Moore on the subject? State particularly whether or not, anything, and what was said as to the objects or motives of said Nicholson as to his pecuniary condition, as to his indebtedness, and to whom, and to what sums? Had you or not any, and if any, what authority from said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore on the same, or any like subjects; if so, state who said persons were, and state the said conversation, and the time, place, and circumstances? Did you or not ever hear any statement by said Moore, previous to said sale, in regard to the pecuniary condition, solvency, or insolvency of said Nicholson; if so, state the same fully; and if you have heard any similar statements within six months since the said sale, state what they were, and when?

Fifth. Are you or not acquainted with the handwriting of said Nicholson? Have you or not in your possession, or under your control, any letters or writings purporting to be by said Nicholson, relative to the sale of said stock of goods; if so, in whose handwriting are said letters and writings, and how do you know the same? Please attach them to your answer, and mark them so as to identify them as a part of your deposition.

HAMILTON & CHANDLER,
Solicitors for Complainants.

Cross-interrogatories to Warren Larkins.

Cross-interrogatory first. Please if any communication made to you by the defendant Nicholson, about the time of his closing his business and selling off his stock to the defendant Moore, was not made to you as the attorney of Nicholson, and in the confidence existing between attorney and client?

Cross-interrogatory second. If you answer the complainants' interrogatories without claiming the protection between attorney and client, then please say if you do not know that Moore did not purchase all the stock of Nicholson's? and did you not purchase a portion of said goods while the invoices were being made up; and if so, at what cost? For whom did you purchase said goods? and what did you do with them?

Cross-interrogatory third. If, in answer to the fifth direct interrogatory, you annex any writing of Nicholson's, say whether you obtained the same while in the relation of attorney and client?

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Sols. pro Defts.

Interrogatories to C. K. Hall.

Interrogatories to C. K. Hall, a witness, residing in the county of Bastrop, State of Texas, for the complainant, in the same cause.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851; if so, state the amount of said goods so sold? Where did the said defendant reside at that time, and where did you reside?

Third. Did you or not know the general reputation of said Nicholson in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Where did you live in the year 1851, and what was your occupation? Where did you buy goods in the years 1850 and 1851? Did you or not know, or do you or not know the wholesale prices of such goods as were sold by said Nicholson to said Moore, in the city of New York, in the years 1850 and 1851; if so, state, as near as you can, what the goods sold by Nicholson to Moore were worth in Bastrop, at the time of such sale, over or under New York cost, and the charges of delivering them in Bastrop? What per cent. will it cost to bring such goods as sold by Nicholson to Moore from the city of New York to Bastrop, Texas?

Fifth. Did you or not ever hear any statement by said Moore, pre-

vious to said sale, in regard to the pecuniary condition, solvency or insolvency, or indebtedness of said Nicholson; if so, state the same fully? and if you have heard any similar statements within six months since the said sale, state what they were, and when?

Sixth. Did you or not ever have any conversation with said Moore, before or about the time of said sale, in regard to any indebtedness of said Nicholson to complainants; if so, state the same fully? Did you or not, previous to or about the time of said sale, have any conversation with said Moore, or hear any person, and what person, make any statements to or in presence of said Moore, in regard to the pecuniary condition and circumstances of said Nicholson, or his ability to pay his debts, or of his indebtedness to complainants, or his intentions as to paying them; if so, state all of such conversation or statement fully, with the time, place, and circumstances?

Seventh. Did you or not, ever hear the defendant Moore say how much he made by the purchase of said goods from Nicholson? If so, state all he said at each time or times.

Eighth. Did you or not, ever have any conversation with said Moore in regard to Nicholson, being alarmed one or more of the nights, during the taking an account of the goods sold by Nicholson to Moore? If so, state all that was said. What reason was given for Nicholson being alarmed? Was or not, any invoice, or account of said goods taken or completed at the time of their delivery? Did you or not, hear any reasons given therefor, or for the time and manner of the delivery, by said Moore and Nicholson, or either and which of them in the presence of the other?

Ninth. Are you or not, acquainted with the handwriting of said Nicholson? If so, please examine the letter or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters, or writing, are, and how you know the same?

Tenth. Did you or not, ever have any conversation with, or hear the defendant, Nicholson, make any statement in regard to the conditions of said sale to said Moore, or as to what interest he retained in the goods or the proceeds thereof, after such sale to said Moore, or at the time of said sale? If so, state all of such conversation or statement fully, with the time, place, and circumstances. Who was present?

HAMILTON & CHANDLER,
Sols. for Complt's.

Cross-Interrogatories to C. K. Hall.

Cross-interrogatory first. If in answer to the second direct interrogatory to you, you say anything about the sale of goods by the defendant Moore to the defendant Nicholson, say if you were present or in Bastrop at the time, or if personally you knew anything about the sale?

Cross-interrogatory second. If you in answer to the 4th direct interrogatory, give any opinion as to the value of the goods purchased by the defendant Moore of the defendant Nicholson; then say whether you ever examined said stock of goods. If yea, were they not remnants of many old invoices which were greatly culled, and consequently deteriorated in value? And if in answer to the 4th direct interrogatory, you say anything about the value of goods at Bastrop, state your opinion as to the difference between new goods purchased that year and an old stock which had been greatly culled. And say in reference to this particular stock, whether or not, it would have been possible to have competed with the Bastrop merchants, to have paid rents, clerks' hire, necessary insurance and expenses, and to have realized a reasonable profit over and above New York cost, without adding other and saleable goods to the stock, and thus running all the risks of merchandise? And ought not an old and culled stock to be purchased on very reasonable terms to justify making such old stock the foundation of a new business?

Cross-interrogatory third. Say if you purchased any part of said goods from Moore? If yea, did you not purchase by the same invoice and at the same price at which Moore purchased? How many, and to what amount did you purchase? Did you not select? And did you find said investment a fortune-making business? Did you not find them unsaleable and slow, even when mixed with your new stock? And would they not have been very unprofitable had you not have had other goods to mix with them? Have you not got some of the goods yet on hand? And allowing that the whole amount purchased bore their reasonable proportion of your every expense, has not the investment been a rather unprofitable one? And had you taken all at the same price, how could it have been any better?

Cross-interrogatory third. If you speak of any conversations with Moore, say particularly whether they were before or about the time of the purchase from Nicholson? Whether they were loose and general, or particular? And say whether or not, he ever mentioned the names of Sheldon & Co.; or whether he knew them or not?

Cross-interrogatory fourth. If in answer to the seventh direct interrogatory you say, that you ever heard the defendant Moore say anything in reference to how much he made by his purchase from Nicholson, say particularly where, when, and where he made such statement; and say what per cent. he ought to have realized over and above what he paid, in order to have paid a handsome mercantile profit out of such speculations.

Cross-interrogatory fifth. If in answer to the eighth direct interrogatory, you say anything about the goods being invoiced and delivered in the night, say if retail and wholesale arrangements are not frequently consummated in the night without at least affecting the fairness of the transaction.

Cross-interrogatory sixth. If in answer to the ninth direct interrogatory, you say that you ever had any conversation with Nicholson about his reserving an interest in the goods sold to Moore, say whether Nicholson was entirely sober at the time, and if he said he retained any such interest, have you not many reasons for believing that he either misunderstood himself or told an untruth?

S. C. BLANTON,
J. & GEO. W. PASCHAL,
Sols. pro Defts.

Interrogatories to W. J. Gamble.

Interrogatories to William J. Gamble, a witness residing in the county of Bastrop, State of Texas, for the complainants, in the same cause.

First. Are you acquainted with the parties to this suit, or any and which of them?

Second. Do you or not, know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods so sold. Where did the said defendants reside at that time?

Third. State what was the general reputation of said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said call, and what has it been since that time, if you know?

Fourth. Where did you live in the year 1851, and what was your occupation? Where did you buy goods in the years 1850 and 1851? Did you or not know, or do you or not know, the wholesale prices of such goods as were sold by said Nicholson to said Moore, in the city of New York, in the years 1850 and 1851? If so, state as near as you can, what the goods sold Nicholson by Moore, were worth in Bastrop at the time of such sale, over or under New York cost, and the charges of delivering them in Bastrop. What per cent. will it cost to bring such goods as sold by Nicholson to Moore, from the city of New York to Bastrop, Texas?

Fifth. Did you or not, ever hear any statement by said Moore, previous to said sale, in regard to the pecuniary condition, solvency or insolvency, or indebtedness of said Nicholson? If so, state the same fully, and if you have heard any similar statements within six months since the said sale, state what they were, and when?

Sixth. Did you or not, ever have any conversation with the said Moore before or about the time of said sale, in regard to any indebtedness to said Nicholson to complainants? If so, state the same fully. Did you or not, previous to or about the time of said sale, have any conversation with said Moore, or hear any person, and what person, make any statement to, or in the presence of said Moore, in regard to the pecuniary circumstances and condition of

said Nicholson, or his ability to pay his debts, or of his indebtedness to complainants, or his intentions as to paying them? If so, state all of such conversation or statement fully, with the time, place, and circumstances.

Seventh. Did you or not, ever hear the defendant Moore, say how much he made by the purchase of said goods from Nicholson, within twelve months after the date of purchase? If so, state all he said at such time or times.

Eighth. Did you or not, ever have any conversation with said Moore, in regard to Nicholson being alarmed one or more of the nights about the time of said sale, during the taking an account of the goods sold by Nicholson to Moore? If so, state all that was said. What reason was given for Nicholson's being alarmed? Was or not, any invoice, or account of said goods taken or completed at the time of their delivery? Did you or not, hear any reasons given therefor, or for the time and manner of the delivery by said Moore and Nicholson, or either and which of them, in the presence of the other?

Ninth. Are you or not, acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

Tenth. Did you or not, ever have any conversation with, or hear the defendant Nicholson make any statements in regard to the conditions of said sale, to said Moore, or as to what interest he retained in the goods or the proceeds thereof, after such sale to said Moore, or at the time of said sale? If so, state all of such conversation or statement fully, and with the time, place, and circumstances. Who was present?

HAMILTON & CHANDLER,
Sols. for Complts.

Cross-interrogatories to W. J. Gamble.

Cross-interrogatory first. If in answer to the first and fourth direct interrogatories, you say you know anything about the stock of goods of Nicholson, which were purchased by Moore, say whether you had not a short time before said purchase been offered said goods at cost? Whether you did not examine the stock with a view of making said purchase? What amount of said goods did you purchase, and at what prices, compared with the New York cost? And why did you not purchase the balance? State when, and through how many years the goods had been purchased by Nicholson? With what fairness as to the New York prices? How had they been handled? How had they been culled? What was the merchantable and saleable quality of the goods on hand, and the prospect of realizing anything like a reasonable profit over and

above New York cost for them? State your belief, and give your reasons, and particularly your reasons for not purchasing.

Cross-interrogatory second. Please say whether or not, it would have been possible for the purchaser of the Nicholson stock of goods, to have competed with the Bastrop merchants, and to have realized New York cost, after paying rents, insurance, clerks' hire, necessary loss, and every expense, unless the purchaser added new goods and incurred all the risks of a merchant.

Cross-interrogatory third. If you make any statement in regard to the sayings of Moore, please say if he did not say that his first inducement for purchasing was because he, Nicholson, was in debt to him, the said Moore, and that said indebtedness formed part of the consideration.

Cross-interrogatory fourth. Say if you do not know that defendant, Moore, had a part of the Nicholson stock of goods on hand for a long time. That they were mingled with his new stock, and yet unsaleable. That many of them were forced off, and that the stock generally would have been unsaleable had they been offered without replenishing.

Cross-interrogatory fifth. State all you know which will benefit the defendants.

S. C. BLANTON,
GEO. W. PASCHAL,
Solicitors pro Defendants.

Interrogatories to George W. Jones.

Interrogatories to George W. Jones, a witness, residing in the County of Bastrop, State of Texas, in same cause, for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the said defendant reside at that time, and where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state, as near as you can, the time or times of such conversation, and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson, as to his pecuniary con-

dition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what, authority from said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore, or in his presence, on the same or any like subject, previous to or up to the date of said sale? If so, state who said persons were; and state the said conversation, and the time, place, and circumstances. Did you or not ever hear any statement by said Moore previous to said sale in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months, since the said sale, state what they were, and when?

Fifth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

HAMILTON & CHANDLER,
Solicitors for Complainants.

Interrogatories to Robert A. Rutherford.

Interrogatories to Robert A. Rutherford, a witness residing in the County of Bastrop, State of Texas, in same cause, for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the defendants reside at that time? Where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary situation, previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state, as near as you can, the time or times of such conversation, and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects and motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what, authority from said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore on the same or any like subjects? If so, state who

said persons were, and state the said conversation, and the time, place, and circumstances. Did you or not ever hear any statements by said Moore previous to said sale in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months since said sale, state what they were, and when.

Fifth. Are you not acquainted with the handwriting of Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

Sixth. State whether or not the defendant Nicholson ever made an assignment of his goods, property, or effects to you? If so, at what time, and the intrinsic worth or amount so assigned. State the amount of said Nicholson's indebtedness at the time of said assignment, if you know. State the amount which has at this time been realized out of said property assigned to you, and the utmost which can be realized out of the same hereafter, if you know. Please state in what manner the assignment was made. What was its character, its conditions, if any, and what has been done with the proceeds realized from said property so assigned?

HAMILTON & CHANDLER,
Solicitors for Complainants.

Cross-interrogatories to Robert A. Rutherford.

Cross-interrogatory first. If, in answer to the direct interrogatories, you say you had any conversations with Moore relative to his purchase from Nicholson, state if he did not say that his object was to secure his own debt against Nicholson, and that that was his object in bringing the suit. State if he did not say that he paid over the value of the goods. State what Moore said was his motives in buying; and did he not deny all fraud and all intention to defraud the creditors of Nicholson?

Cross-interrogatory second. State if you do not know that many of the goods purchased by Moore of Nicholson were on hand a long time, and very unsaleable.

Cross-interrogatory third. State all you know which will benefit the defendant.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Solicitors pro Defendant.

Interrogatories to William Dunbar.

Interrogatories to William Dunbar, a witness residing in the County of Bastrop, and State of Texas, in same cause, for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the

defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the said defendant reside at the time? where did you reside?

Third. State what was the general reputation of the said Nicholson, if you know, in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore, previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state, as near as you can, the time or times of such conversations, and state fully and particularly all that you said to said Moore on the subject; state particularly whether or not anything, and what, was said as to the objects and motives of said Nicholson, as to his pecuniary condition, as to his indebtedness, and to whom, and in what sums. Had you or not any, and if any, what, authority from said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore on the same or any like subjects? If so, state who said persons were, and state the said conversations, and the time, and place, and circumstances. Did you or not ever hear any statements by said Moore, previous to said sale, in regard to the pecuniary condition, solvency, or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements within six months since the said sale, state what they were, and when.

Fifth. Are you acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to the answers of Warren Larkins, and state in whose handwriting said letters or writing are, and how you know the same.

HAMILTON & CHANDLER,
Solicitors pro Complainants.

Interrogatories to Jacob C. Higgins.

Interrogatories to Jacob C. Higgins, a witness residing in the County of Bastrop, in the same case, for complainants.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant Nicholson to the defendant Moore, about the summer of 1851? If so, state the amount of said goods. To whom did he sell? Where did said defendant reside at that time? where did you reside?

Third. If you know, please state what the general reputation of the said Nicholson was, in the community where he lived, as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever carry any communications, written or verbal, from either of the defendants to the other, previous to or about the time of said sale, relating to the sale of said goods and property, or to either? If so, please state such communication or communications, as near as you can, with the time, place, and circumstances.

Fifth. Did you or not ever have any conversation with said Moore, previous to said sale, in regard to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of said Nicholson? If so, state the same fully—and if you have had any similar conversation since the said sale, within six months, state what it was, and where?

Sixth. Did you or not ever hear the defendant, Moore, make any statement to you, or in your presence, relative to the solvency or insolvency, indebtedness or failing circumstances of said Nicholson at the date of said sale or about that time? If so, state the same fully.

Seventh. Did you or not ever make any statements or hear any one else make a statement, in the presence of said Moore, previous to or during the progress of said sale, relative to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of said Nicholson? If so, please state, as near as you can, all of such statements, with the time, place and circumstances.

Eighth. Did you or not give any information or hear any one else give any information to the said Moore relative to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances of the said Nicholson? State particularly whether or not you or any one else made a statement, made in the presence of said Moore, relative to the indebtedness of said Nicholson to complainants? If so, state the same fully.

Ninth. Did you or not ever hear said Moore make a statement as to the reason of said Nicholson's selling his stock of goods and other property? If so, state the same fully, with time, place and circumstances?

HAMILTON & CHANDLER,
Sols. for Complts.

Cross-interrogatories to Jacob C. Higgins.

Do you not recollect that in all the conversations which Moore ever had with you he always protested and said that the transaction in purchasing the goods of Nicholson was fair, on his part?

That the first object was to secure his debt? That he had no intention to defraud the creditors of Nicholson? That his first object was to secure his own debt? That the goods were high, unsaleable, and a bad bargain? Did he not say all these things, and many more of the same sort?

Cross-interrogatory Second. Say if Nicholson did not offer you

this same stock of goods at New York cost? and why did you not purchase them? State the then condition of said goods; their age; how bad they had been bought; how culled; what were they then worth compared with the New York cost? the purchaser taking every risk and expense of selling. State particularly, and give your reasons.

Cross-interrogatory Third. State all you know which will benefit the defendants.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL.

Interrogatories to C. C. McGinnis.

Interrogatories to C. C. McGinnis, a witness residing in the County of Bastrop, State of Texas, in same cause, for complainants.

First. Are you or not acquainted with any of the parties to this suit, or any and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to the defendant Thomas C. Moore, about the summer of the year 1851? If so, state the amount of said goods. Where did the said defendants reside at that time? Where did you reside?

Third. If you know, please state what the general reputation of the said Nicholson was, in the community where he lived, as to solvency and pecuniary situation, previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever have any conversation with said Moore, previous to the time of said sale, in regard to a conveyance or assignment by said Nicholson of his property? If so, state as near as you can the time or times of such conversation; and state fully and particularly all that you said to said Moore on the subject. State particularly whether or not anything, and what, was said as to the objects or motives of said Nicholson; as to his pecuniary condition; as to his indebtedness; to whom, and in what sums? Had you not any, and if any what, authority from said Nicholson to make the said statements, or any, and which of them? Did you or not ever hear any conversation between any other persons and said Moore on the same, or any like subjects?

If so, state who such persons were, and state the said conversation, with the time, placeand circumstances. Did you not ever hear any statement made by said Moore, previous to said sale, in regard to the pecuniary condition, solvency or insolvency of said Nicholson? If so, state the same fully; and if you have heard any similar statements, within six months since the said sale, state what they were, and when?

Fifth. Are you or not acquainted with the handwriting of said Nicholson? If so, please examine the letters or writing attached to

the answers of Warren Larkins, and state in whose handwriting the same are, and how you know?

HAMILTON & CHANDLER,
Solicitors for Complainants.

Cross-interrogatories to C. C. McGinnis.

Cross-Interrogatory First. Please say if any conversations made to you by defendant Moore, contemplated by the direct interrogatories of the complainants, were not made while you were acting as the attorney of the defendant, Moore, and in the confidence of attorney and client?

Cross-Interrogatory Second. Please, if you do not protect yourself by the confidential privileged communications of your client, to say whether, at the time of the sale of Nicholson to Moore, he, Nicholson, was not indebted to Moore? and did not Moore say that his first object was to secure his own debt; and was not that the principal cause of Moore making the purchase?

Cross-Interrogatory Third. Do you not know that the stock of goods of Nicholson had before been offered at cost; that they were the remnants and remainders of old purchases, and that many of them remained upon Moore's hands a long time?

Cross-Interrogatory Fourth. Please state any and every other fact which will benefit the defendants.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Solicitors pro Defendants.

Interrogatories to T. B. J. Hill.

Interrogatories to Thomas J. B. Hill, a witness, residing in the County of Bastrop, State of Texas, in same cause, for complainants.

First. Do you or not know the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson to defendant Thomas C. Moore, about the summer of the year 1851? If so, state what amount of the stock of goods of said Nicholson was so sold. Whether the whole, or some part, and what part thereof? Where did said defendants, Moore and Nicholson, reside at that time? And where were the goods when sold by Nicholson to Moore? Where did you reside then?

Third. What were the pecuniary circumstances of said Nicholson, at the time of said sale, whether solvent, failing, or in what condition? What knowledge or means of knowledge, or information thereof, had said Moore? and state how you know the same. Did you or not before, or about the time of said sale, hear said Nicholson state, in the presence of said Moore, the condition of his pecuniary

affairs; his ability to pay his debts; the cause of his selling said stock of goods; whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or matters of like character? If so, state all that he said on those subjects respectively, and the time, place and circumstances of the conversation, if you know.

Fourth. Did you or not ever have any conversation with Moore, or hear said Moore make any statement, previous to, about the time, or since said sale, in regard to a conveyance or assignment by said Nicholson of his property or any part of it? If so, state as near as you can the time or times of such conversation or statements, and state fully and particularly all you said to said Moore, or heard said Moore say on the subject.

State fully and particularly what, if anything, was said as to the objects and motives of said Nicholson; as to his pecuniary condition; as to his indebtedness; and to whom, and in what sums?

Fifth. Did you or not ever hear the defendant Moore previous to, about the time, or within six months subsequent to said sale, make any statement relative to the solvency, insolvency, indebtedness, failing circumstances or pecuniary condition of said Nicholson, before, or at the time that he, Nicholson, sold said stock of goods to him, Moore? If so, state the same fully, with time, place and circumstances, if you know.

HAMILTON & CHANDLER,
Solicitors for Complainants.

Cross-interrogatories to Thomas J. B. Hill.

Cross-Interrogatory first. If in answer the direct interrogatories you speak of the sayings of Nicholson to Moore, please state if they were not uniformly accompanied by the remark that he, Nicholson, had an abundance to pay his debts, and that he was only desirous to obtain time upon them? and that if he could obtain such time he would be able to meet them?

Cross-interrogatory second. Please say whether or not you ever carefully examined the stock of goods which Moore purchased of Nicholson. What was the condition of the same? How, when, and where had they been purchased, and at what comparative rates as to being cheap or dear? And what per centum over and above New York cost were they in fact worth? State the facts, your means of knowledge, and your reasons.

Cross-interrogatory third. Say if you became a partner of the defendant Moore soon after he purchased the stock of Nicholson. If yea, state if you found an invoice on hand of the purchase, and at what rate below or above New York cost were the goods purchased. Did Moore charge the goods to the firm of Moore & Hill at the same price he purchased the goods of Nicholson?

How did you succeed in selling the stock, and at what profits? Did you sell any part at wholesale, and to whom? When, where, what amount, and at what profit or loss? How long did many of the others remain on hand, and how were they forced off?

Calculating the time, expenses, risk, and every fact connected with it, what profit was made upon the purchase? Could the firm have purchased goods on a credit upon their own notes, and at what comparative advantage?

Cross-interrogatory fourth. Please state to whom Nicholson transferred the notes of Moore, and to whom were they paid? And state all you know which will benefit the defendants; and if you have given any conversations of Moore, now relate the whole of said conversations.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Solicitors pro Defendants.

Interrogatories to Robert H. Hall.

Interrogatories propounded to Robert H. Hall, a witness residing in the county of Bastrop, in same case for the complainants.

First. Are you, or not, acquainted with the parties to this suit, or any and which of them?

Second. Did you, or not, ever buy a note or notes from the defendant Nicholson? If so, please state if you, or not, ever bought one executed by defendant Moore to defendant Nicholson? If so, state the amount of money said note called for on its face? When was said note dated, when payable, and to whom payable? What consideration did you pay for the same? Did you, or not, ever have any conversation with said Moore relative to said note, the consideration for which it was given, &c.? If so, please state fully and particularly all such conversation or conversations, with time, place, and circumstances. Did you, or not, ever have any conversation with said Moore relative to the pecuniary condition, indebtedness, solvency, or insolvency, of said Nicholson, about the time said note was executed? If so, state the same fully? Did you, or not, ever hear any statement made by said Moore relative to his (Moore's) knowledge of Nicholson's being in failing circumstances, or being broke at the time he (Moore) bought said Nicholson's goods and other property, and why he (Moore) bought said goods and other property of Nicholson? If so, state fully and particularly, as near as you can, all such statement, with the time, place, and circumstances.

Third. Did you, or not, ever have any conversation with the defendant, Moore, relative to the pecuniary condition of said Nicholson at the time he sold his goods and other property to said Moore? If so, please state all of such conversation. Did you, or not, ever hear said Moore make a statement as to the motives or intentions

of said Nicholson in selling his goods in the manner he did? If so, please state all of such conversation or conversations, with the time, place, and circumstances. Did you, or not, ever hear defendant, Moore, make any statement as to how much he made by the purchase of said Nicholson's goods and other property? If so, please state what it was.

Fourth. Did you, or not, ever hear the defendant Nicholson make a statement as to the character of the sale from him, Moore, and what the conditions of said sale were, if any? If so, please state all of such conversation or statement, with time, place, and circumstances.

Are you, or not, acquainted with the handwriting of defendant Nicholson? If so, please examine the letter or writing marked Exhibit B., attached to the answers of Warren Larkins, and state in whose handwriting the same is, if you know.

HAMILTON & CHANDLER,
Solicitors for Complainants.

In Chancery.

Between HENRY SHELDON & Co., complainants,
and
JAMES NICHOLSON, REBECCA H. NICHOLSON, his wife, and THOMAS C. MOORE, defendants.

Interrogatories to be exhibited for the examination of witnesses, to be produced and sworn in a certain cause now depending in the United States District Court for the District of Texas at Austin, on the chancery side thereof, wherein the said Henry Sheldon and Company are complainants, and the said Nicholsons and Moore are defendants, viz.:

Interrogatories for the examination of Hiram Gillespie and L. C. Cunningham, and , who reside in the town of Bastrop, in said State of Texas.

Interrogatory first. Hiram Gillespie, please say whether, or not, you were acquainted with the stock of goods which the defendant, Thomas C. Moore, purchased of the defendant James Nicholson, some time during the year 1851. If yea, state your means of knowing the same; your experience as a merchant; what examination you gave to them; when, where, and through how many years, had they been purchased by Nicholson; how had they been kept and handled; what was their condition; and what their value, as compared with the invoice original prices thereof.

Interrogatory second. Say whether defendant Moore, after he purchased said goods, offered you any and what interest in the same; upon what terms; what examination did you make of the goods; and his terms of purchase, and why did you not accept this offer.

Interrogatory third. Say if you know how long said Moore kept any and what portion of said goods on hand; what was the possi-

bility of competing with other Bastrop merchants, and selling at a reasonable profit, without replenishing the stock; and say whether or not, in your opinion, it would have been impossible for the defendant Moore to have paid all expenses, rents, insurance, clerks' hire, necessary losses, and to have realized a reasonable profit upon said goods, without adding to the stock, and thus increasing all the risks of merchandise; and say what net profit the investment ought to have paid to have made it a remunerating business.

Interrogatory fourth. Do you know, or can you set forth, any matter or thing which may be a benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. C. BLANTON, and
J. A. & GEO. W. PASCHAL,
Solicitors pro Defendants.

Cross-interrogatories to Hiram Gillespie.

First. What was the pecuniary circumstances of said Nicholson about the time he sold his stock of goods to Moore, whether solvent or insolvent, indebtedness or failing circumstances—and what knowledge, or means of knowledge, of the pecuniary condition of said Nicholson had said Moore, and how you know the same?

Did you, or not, at or about the time of said sale, hear the said Nicholson, or any other person, and what person, state to or in the presence of said Moore, the condition pecuniary of said Nicholson—his ability to pay his debts—his motives or intentions for selling his goods and property—whether or not he was indebted to complainants, and his intentions as to paying—or any of said matters, or matters of like character? If so, state all that he said on those subjects respectively, or on subjects of like import, with the time, place, and circumstances.

Please state whether or not, previous to, at, or about the time of said sale, or within six months thereafter, you ever heard the defendant Moore make a statement to you, or to any other person, relative to his knowledge of the pecuniary condition of said Nicholson before or at the time of said sale, his ability to pay his debts, his solvency or insolvency, failing circumstances, or otherwise. If so, state the same fully, with time, place, and circumstances.

Please state whether or not the defendant Moore ever told you, or stated in your presence, the motives or intentions of said Nicholson in selling his stock of goods; whether or not it was to evade, prolong, or hinder the collection of debts owing of said Nicholson to complainants, or to other persons, and whom; and what said Moore said to you relative to the honesty of said Nicholson in said transaction, and generally all that said Moore said to you relative to the

transaction, his knowledge of the pecuniary condition of said Nicholson, and his ability to meet his liabilities.

HAMILTON & CHANDLER,
Solicitors pro Complainants.

Interrogatories to L. C. Cunningham.

Second. To L. C. Cunningham and J. C. Radford.

Interrogatory first. Please say whether or not you were acquainted with the stock of goods which defendant Thomas C. Moore purchased of the defendant James Nicholson, some time during the year 1851. If yea, state your means of knowing the same—your experience as a merchant—what examination you gave to them—when, where, and through how many years had they been purchased by Nicholson—how had they been kept and handled—what was their condition—and what was their value, as compared with the invoice original value thereof.

Interrogatory second. Say if you know how long said Moore kept any and what portion of said goods on hand; what was the possibility of competing with other Bastrop merchants, and selling at a reasonable profit, without replenishing the stock; and say whether or not, in your opinion, it would have been possible for the defendant Moore to have paid all expenses, rents, insurance, clerks' hire, necessary losses, and to have realized a reasonable profit upon said goods, without adding to the stock, and thus incurring all the risks of merchandise, and say what net profits the investment ought to have paid to have made it a remunerating business.

Interrogatory third. Do you know, or can you set forth, any matter or thing which may be of benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject-matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Solicitors pro Defendants.

Interrogatories to Wilson Kenneday.

Third. Interrogatories for the examination of Wilson Kenneday.

First interrogatory. Please say if you know anything, and what, relative to the purchase of the stock of goods by the defendant Moore of the defendant Nicholson; if so, where? when? what amount? At what data were the prices ascertained? By whom was the invoice made up, and what was the aggregate amount? What were your opportunities of knowing the fairness of the transactions? and state its character for fairness and honesty. State all the circumstances.

Interrogatory second. Do you know, or can you set forth, any matter or thing which may be of benefit or advantage to the parties at issue in said cause, or either of them, or that may be material to the subject-matter of this your examination, or the matters in question in this cause? if yea, set forth the same fully and at large in your answer.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Solicitors for Defendants.

Cross-interrogatories to Wilson Kenneday.

First. State, if you know, what was the pecuniary condition of said Nicholson at the time he sold his stock of goods to said Moore? What knowledge, or means of knowledge or information, had said Moore of the pecuniary condition of said Nicholson, or any other person, and what person? State, to or in the presence of said Moore, what the pecuniary condition of said Nicholson was; his solvency or insolvency; indebtedness, or ability to pay his debts at or about the time of said sale; if so, state the same fully. Did you or not ever hear said Moore say what was, or what knowledge he had of the pecuniary condition of said Nicholson at or about the time he sold his stock of goods to said Moore? When were the goods turned over to Moore? whether in the day or night time? whether before or after the invoice was made and completed? and what were the reasons given either by said Moore or Nicholson for the time and manner of the delivery? State whether or not you ever heard said Nicholson say what his motives or intentions were, in the presence of said Moore, for selling or disposing of his goods; whether or not it was to evade, prolong, hinder, or delay the collection of complainants' debt, or the debts of third persons, and whom?

Interrogatory 2d. State whether or not you ever heard the defendant Moore say or admit that he knew that Nicholson made the sale to him (Moore) with purpose and intention of evading, hindering, prolonging, delaying the recovery of the debt of complainants.

HAMILTON & CHANDLER,
Solicitors for Complainants.

United States of America, District of Texas. In the District Court of the United States.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, complainants,
v.
JAMES NICHOLSON, REBECCA H. NICHOLSON, THOMAS C. MOORE, defendants.

Answers to Interrogatories and Cross-interrogatories.

I, James A. Poage, a citizen of Bastrop county, in the State of

Texas, do solemnly swear that I will, according to the best of my skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, or any other cause, take the examinations and depositions of all and every witness and witnesses produced and examined upon the interrogatories and cross-interrogatories delivered to me, and I will not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken by me, until publication shall pass, pursuant to some general or special order of the court wherein the same are taken. So help me God.

JAMES A. POAGE.

The State of Texas, County of Bastrop.

Personally appeared before me, William H. Garrett, chief justice of said county, and presiding officer of the County Court of said county, which is a court of record, James A. Poage, to me well known, and being by me sworn, makes oath to and subscribes the above affidavit signed by him.

Given under my hand and the seal of the County Court of said county of Bastrop, affixed this 26th day of June, A.D. 1854.

WILLIAM H. GARRETT,
Chief Justice of Bastrop County, Texas.

State of and District of Texas, County of Bastrop.

Depositions of witnesses, proven, sworn, and examined on the day of A.D. 1854, at my office in the town of Bastrop, in the county of Bastrop, in the State of Texas, by virtue of a commission issued out of the District Court of the United States for the District of Texas, in chancery, to me, James A. Poage, directed, for the examination of witnesses in a cause then pending in chancery between Henry Sheldon & Co., complainants, and James Nicholson, Rebecca H. Nicholson, and Thomas C. Moore, are defendants.

I, James A. Poage, acting commissioner under the said commission, having first duly taken the oath to the said commission, and according to the tenor and effect thereof, and as thereby directed on the part and behalf of the said complainants.

Answers of Warren Larkins.

Warren Larkins, of the county of Bastrop and State of Texas, aged 28 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants, and he deposes and says as follows:

In answer to the first interrogatory to him addressed, and by me propounded, he says, that he is acquainted with Nelson Clements,

one of the complainants, and not with the other complainants, and he is acquainted with the defendants.

2d. To the second interrogatory to him propounded, he says, that he does know that a sale of goods took place, and was made by the defendant James Nicholson to the defendant Thomas C. Moore in the summer of the year 1851. He says there was several thousand dollars worth, but don't know the exact amount of goods. The defendant resided at that time in the town and county of Bastrop, Texas, and he resided at the same place.

3d. To the third interrogatory to him propounded, he says, that the general reputation of the said defendant Nicholson was not good for a short time previous to, and at the time of the said sale, and laboring under pecuniary embarrassment at the time; and he, said Nicholson, has been considered utterly insolvent since the time of said sale.

4th. To the fourth interrogatory to him propounded, he says, a short time previous to said sale made by Nicholson to Moore, he was acting as the attorney of T. W. House, Esq., of Houston, Texas, in making a settlement with James Nicholson, who was at the time owing said House about the sum of ten thousand dollars. He was instructed to force the settlement of the claim immediately, and called upon Nicholson and demanded payment. Nicholson, having previous to this time made an assignment or mortgage of a portion of his goods, which were in transitu from New York, to secure a debt due to Peet, Sims & Co., of New Orleans, and owing other sums at the time, told me that he could manage to secure the claim of House held by me, but that it would leave him in so embarrassed a condition that he feared his storehouse would be closed by certain large creditors in New York, among whom was mentioned the firm of Henry Sheldon & Co., to whom a large amount was due; and that he felt unwilling to see them come down on him, and appropriate his effects to the exclusion of a large amount of home and other debts, which he thought ought to be preferred under the circumstances. After he had made arrangements to secure the debt due T. W. House, Esq., he suggested to Nicholson the propriety of making an assignment to some one, in which assignment provision could be made to pay those creditors whom he wished to favor. He suggested to Nicholson the name of Thomas C. Moore, one of the defendants, whom he deemed a suitable man to close up the business. Whilst Nicholson and myself were talking on the subject, we saw Mr. Moore in the street and called him in, and Mr. Nicholson proposed to him to accept an assignment of his effects, as stated above. Mr. Moore said that he would take the matter under advisement. He thinks it was on the next day he was instructed to draw up a deed of assignment, the parties stating that they had agreed upon the terms, which was that Mr. Moore should take an assignment of all Nicholson's effects, and pay his debts so far as they would go, giving preference to certain

claims therein specified. Being taken suddenly sick, he requested John Marshall, Esq., to draw up the assignment, which he did, and left at my office. A short time afterwards, Mr. Moore called to see him, and told him that he had concluded not to take an assignment, but had purchased the goods absolutely of Nicholson. The conversations in which the subject was introduced to Moore was several days before he (witness) was informed by Moore that he had made the purchase. The objects and motives of Nicholson, as explained to Moore at the time of the introduction of the subject to said Moore, were to secure certain creditors of Nicholson against loss, as he (Nicholson) found, unless he did so, all his property would be absorbed by his large New York creditors, especially Henry Sheldon & Co., to whom he (Nicholson) said he was largely indebted. He (witness) does not recollect whether he heard any conversation between Moore and other persons on the subject; and he (witness) does not think he ever heard Moore express himself in regard to the pecuniary condition of Nicholson previous to the time stated in the first part of my answer to this interrogatory.

5th. To the fifth interrogatory to him propounded, he says, that he is acquainted with the handwriting of James Nicholson, the defendant, and he, witness, has in his possession a letter from James Nicholson, dated "Bastrop, July 18th, 1853," written to F. W. Chandler, Esq., Austin, to which is attached by wafers a memorandum, written by James Nicholson on the subject of said sale. The letter and memorandum attached thereto will be found attached to these answers, and marked Exhibit "A." The letter and memorandum are both in the handwriting of the defendant James Nicholson. They were handed to him, witness, by Mr. Chandler, with a request that he, witness, should examine them, and if he knew whose handwriting they were in he, witness, should attach them to his answer to certain interrogatories which would be propounded to him, witness, in the case now between the complainants and defendants, titled at the caption of the answer.

WARREN LARKINS.

Answers of Warren Larkins to Cross-interrogatories.

And the said Warren Larkins deposes and says as follows. In answer to the cross-interrogatories to him adduced and by me propounded, he says:

1st. That to the first cross-interrogatory he has stated the circumstances under which the conversation took place. He was at the time acting as the attorney for T. W. House, Esq.; this led him into a knowledge of the facts. His advice to Mr. Nicholson was in the nature of friendly counsel rather than as attorney. He (witness) never charged Nicholson anything for the advice he gave him (Nicholson); he (Nicholson) never agreed to pay him (witness) anything for it. He (Nicholson) never followed his advice.

2d. To the second cross-interogatory he says: Mr. Moore did not purchase all the goods which were in the store of Nicholson at the time of the sale. There was a large lot of domestics in bales, he (witness) believed about twelve bales, which he (witness) had agreed to take in part liquidation of the claim of T. W. House at New York prices. There was also a very large box of winter goods, blankets, &c., which were also taken by him (witness) at five hundred dollars for the lot.

These goods he (witness) afterwards had removed from the store, and they were disposed of for the benefit of T. W. House.

3d. To the third cross-interrogatory he says, that he has already stated he obtained the letter and memorandum hereto attached, marked Exhibit "A," from F. W. Chandler, Esq., and the circumstances under which he obtained it.

WARREN LARKINS.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing deposition to writing in the presence of the witness, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

Exhibit "A."

BASTROP, July 18th, 1853.

F. W. CHANDLER, Esq., Austin.

Dear Sir: On Saturday there was a meeting in our Masonic Lodge, at which place I expected to see Mr. Porter, and have a prudent and private conversation with him, so as to elicit from him his knowledge of the matter of your inquiry, but I was disappointed. This is the reason I did not write you last mail. I will now proceed to answer your questions as explicit as time and circumstance will admit; for circumstances consider I am attending store for Mr. Lubbock, he absent, and but a few words can I write without interruption.

Mr. Moore did not come to me first, seeing him, as I did, conversing with some person in the street. I suggested to a friend with whom I was in conversation about my affairs, the propriety of selling to Moore, as he assurantly was a friend of mine. The answer of the friend was, that it was a good suggestion, and if I sold to him he was a man of nerve and would stick to me. From this I sent that friend to speak to Moore, who conceded to the proposition to purchase. The purchase was made under circumstances that will be brought out in court. Mr. Porter is an important witness; on oath in court he will state facts.

In regard to the sale I have nothing further to state than what I told you, the substance this—if my stock was purchased by him, I

would let him have it at cost; this did not suit. I then said 10 per cent. below cost; no agreement. I then said 20 or 25; Moore did not agree; but afterwards came to me and said my friend said I ought to sell him the stock at 30 per cent. below N. Y. cost, and if I did so he would share with me the proffitts, as it was necessary for every man to protect himself and familey; that I should make provissuns to pay all my Texus debts, thoes I preferred in N. York, but Sheldon's I ought to leave to the last, as Clements, their jr. partner, induced me to pay the high price of 12½ cents per pound for cotton, on which transaction I lost all my means, and am ruined.

The town lots were purchased by Moore, but subject to redemption at same price as paid. In full value did my wife redeem the lots where my father lives, as was decreed last court. A 3 acre lot, in the possession of Moore, subject to redemption, was at my request deeded to the late sherriff for a debt I had neglected to add into the schedule of assetts.

I cannot conclude without expressing my gratitude for your kindness expressed and implied. There are many facts can be exacted from myself and Porter under oath in a court of justice which would be improper to indite. I wish everything to come out, that I may clear myself before the world of supposed villany.

Once clear, I will show you an experienced man; one whose mind has been dejected by forced secrecy of facts to screen his supposed friend.

Yours truly,

JAMES NICHOLSON.

The stage is here; please excuse the hurried manner of this.

J. N.

Exhibit "A."

At the time of my difficulties I was informed that I might be closed up by any one holding a small foreign claim, the goods sold at a sacrifice to liquidate it, and nothing left for other creditors. Sick and partly crazy with study, I knew not how to act, but threw myself on friends for advice; was advised to sell my stock and make an assignment; that M. would be a good person to sell to; spoke to him; he was willing, but said I should sell them at something less than cost; offered them at New York prices, which would be ten per cent. less than actual cost here; he said he would consider of it; afterwards came and said I ought to sell them for less. I then considered myself; he then told me that he had been speaking to some of my friends, and they advised me to let them go at 30 per cent. below N. Y. cost, and that I had better do it, and if he made anything he would share it with me—or perhaps he first said he would give me something handsome, but afterwards said he would share it. During last court week he told me he was going to make something

out of the goods; that he would share it with me, as it was always his intention. T. B. J. H. afterwards went into partnership with M., as no stock was taking at the time of copartnership. I thought the interest commenced at first. So H. as well as M. had the benefit of the discount.

The sale was to Moore in a lump, delivered before witness Porter, to commence next day to take stock; when invoice was made out to discount 30 per cent., pass it over to assignee. Moore then proposed to give it in small notes, payable at various times, that before payment I could pay off some particular debts with the notes; all of which was done, Moore and Hill sold out to Hall. M. first told Hall they were 25 per cent. discount. Hall asked me; I told him the truth; then the discount was 30 per cent. agreed on by them.

Answers of Thos. J. B. Hill.

Thomas B. J. Hill, of the County of Bastrop, in the State of Texas, aged 40 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants; he deposes and says as follows:

1st. In answer to the first interrogatory to him propounded he says, that he is not acquainted with the complainants or either of them, but is acquainted with the defendants.

2d. In answer to the second interrogatory to him propounded he says, that he does know of a sale of a stock of goods from the defendant Nicholson to the defendant Moore in the summer of the year 1851. The amount and quantity of said stock of goods so sold he does not know, but it was all the goods that was remaining on hand by Nicholson at the time of said sale.

At the time of said sale the goods were all in the store-house, which had been previously occupied by said Nicholson, in the town of Bastrop, in said county of Bastrop. The defendants Moore and Nicholson and himself resided at the time of said sale in the town and county of Bastrop, Texas.

3d. In answer to the third interrogatory to him propounded, he says, that he knew nothing of said Nicholson's pecuniary circumstances previous to said sale. It was generally rumored in the community where said Nicholson then lived, that he was broke, or unable to pay his debts, previous to said sale. He says he does not know what knowledge or means of knowledge or information the said Moore had of the pecuniary condition of Nicholson. He says he never heard Nicholson state in the presence of said Moore, or any one else, the condition of his pecuniary affairs; his ability to pay his debts; the cause of his selling his goods; whether or not he was indebted to complainants, and his intentions as to paying, or any of said matters, or any of like character. He says he never heard the complainants mentioned until long after the said sale, and then he

said Nicholson said he intended to pay his creditors as far as his means would go. He never had any conversation with said Nicholson about his pecuniary affairs.

4th. In answer to the fourth interrogatory to him propounded, he says, that subsequent to said sale, said Moore and himself frequently talked of Nicholson's pecuniary affairs, when Moore informed him Nicholson had made an assignment for the benefit of his creditors of all of his property. He does not now recollect the precise terms of such conversations; they were frequent, but none previous to or about the time of said sale. What he said to Moore, at the times of those conversations with Moore, he does not now recollect, not expecting then to ever be called on to repeat what was then said.

The motives of said Nicholson or his objects were not talked of by Moore and himself, nor were they known by him (witness), except from the statements of Nicholson made to him (witness), which was, that he, Nicholson, wanted to gain time to make arrangements with his creditors as to the amount of his, Nicholson's indebtedness, and to whom he does not know.

5th. In answer to the fifth interrogatory to him propounded, he says, that he never heard said Moore make any statements relative to the solvency, insolvency, or indebtedness, failing circumstances, or pecuniary condition of said Nicholson, either before, at the time, or subsequent to said sale.

It was notorious to every one in the community that Nicholson was broke, and his condition was frequently spoken of by all, and said Moore with the others, and further he saith not.

THOS. B. J. HILL.

And cross-interrogatories having been propounded to the said Thomas B. J. Hill by the defendants.

Cross-interrogatory 1st. In answer to the first cross-interrogatory to him propounded, he says, that Nicholson frequently said all he wanted was time; that he thought he would be able to pay all he owed.

2d. In answer to the second cross-interrogatory to him propounded, he says, that he frequently examined the stock of goods so sold by Nicholson to Moore, and they were in a very bad condition. He does not know certainly of his own knowledge, but it was generally rumored in the community that Nicholson had bought the said goods on a credit in the summer of 1850, in the city of New York; also that he, Nicholson, had paid, or agreed to pay more for said goods in New York than they could be sold for in Bastrop.

He knows by a subsequent connection he formed with said Moore as a partner in buying and selling goods, that he, Moore, was not able to make the said goods so purchased from Nicholson pay him (Moore) what he gave Nicholson for them, which he thinks a suffi-

cient reason for concluding that Nicholson paid more, or promised to pay more than they were worth in New York.

3d. In answer to the third cross-interrogatory to him propounded, he says, that he became a partner of defendant, Moore, soon after said Moore had made the purchase from Nicholson of the stock of goods aforesaid. He found an invoice of said goods on hand at 20 per cent. below New York cost, and Moore charged the goods to the firm of Moore and Hill at the same price he purchased them from Nicholson. Moore and himself made but a poor business in selling the stock, and had to submit to a severe loss. They sold a large part of said stock to Mr. C. K. Hall, merchant, in Bastrop, at wholesale, without profit, submitting to the loss of twelve months' interest, and thought they were very fortunate in getting out at that. The remnants that were left on hand remained without sale, until out of patience with the affair, Moore and himself divided them out among their negroes.

Calculating all time, expenses, risks, &c., he thinks they (the firm) got out with a profit of twenty per cent. loss.

The firm of Moore and Hill purchased a small lot of goods on a credit from some wholesale merchants in Houston, whilst they were doing business, but with small advantage; it was upon these the firm made all the profit that was made by the concern.

4th. In answer to the fourth cross-interrogatory to him propounded, he says, that a large portion of the notes given by Moore to Nicholson for the said stock of goods were transferred by Nicholson to Robert A. Rutherford, as assignee, for the benefit of his (Nicholson's) creditors, and they were paid by Moore to said Rutherford; the other portion of the notes executed by said Moore to said Nicholson for said goods, were transferred by said Nicholson to those persons of whom he (Nicholson) had bought cotton to be shipped to New York to his (Nicholson's) creditors. Moore paid the notes he executed, as aforesaid, to those persons who held the notes as they fell due. Also one or more of the notes executed by said Moore to Nicholson for said goods was transferred to T. W. House, merchant, of Houston, Texas; which was also paid by Moore when due. He further says, he knows of nothing now of benefit either to complainants or the defendants, to the best of his recollection and belief, and further saith not.

THOS. B. J. HILL.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing depositions to writing in the presence of the witness, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

Answers of William Dunbar.

William Dunbar, of the county of Bastrop, in the State of Texas, aged 35 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is not acquainted with the complainants, but he is acquainted with the defendants.

2d. In answer to the second interrogatory to him propounded, he says, he understood that Nicholson did sell out his stock of goods to defendant Moore in the summer of the year 1851. He don't know the amount of goods sold. The defendants and himself all resided in the town and county of Bastrop.

3d. In answer to the third interrogatory to him propounded, he says, that so far as he knows the general reputation of defendant Nicholson in the community where he, Nicholson, lived, was that he was solvent previous to said sale, or his stopping business. After the said sale Nicholson was generally considered insolvent.

4th. In answer to the fourth interrogatory to him propounded, he says, that he never had any conversation with defendant Moore, previous to or at the time of said sale, in regard to the sale or assignment of the said stock of goods. But he had a conversation with defendant Moore a short time before said Moore took possession of the storehouse in which was the said stock of goods. At which time Nicholson and his wife was present; defendant Moore said, that he, Moore, was taking conveyances from Nicholson and wife of certain real estate and lots of land in Bastrop, in consideration of a debt or debts Nicholson was owing him (Moore); which amount of debts he (witness) understood both Nicholson and Moore to be about eleven hundred dollars, or near that; a part of which was for property sold by Moore to Nicholson some time previous, and a part of which was for money loaned by Moore to Nicholson some time previous. And both Moore and Nicholson requested him (witness) to take notice that the conveyance was made for the purpose of transferring to Moore sufficient property to cover said indebtedness.

This conversation took place when he (witness), as an officer, was taking the acknowledgment of Nicholson and his wife to the execution of the deeds of conveyance. This conversation, above stated, was the only and all conversation and remarks he ever heard Moore say on the subject (either with himself or any other persons) in regard to said sale or assignment; except some time after the sale of the said stock of goods by Nicholson to Moore, and some time after Moore took possession of said goods, witness heard Moore remark, that Nicholson was broke, or busted up, or some such words. And this is all he ever heard Moore say.

In answer to the fifth interrogatory to him propounded, he says,

that he is acquainted with the handwriting of defendant, Nicholson, and on examination of the letter or writing attached to the answers of Warren Larkins, he (witness) believes the said letter and writings are in the handwriting of the defendant Nicholson, and further saith not.

WILLIAM DUNBAR.

And I, James A. Poage, the commissioner aforesaid, do certify, that I reduced the above foregoing deposition to writing in the presence of the witness, William Dunbar, and read the same to him, whereupon he subscribed his name thereto, as above written.

JAMES A. POAGE,
Commissioner.

Answer of George W. Jones.

George W. Jones, of the county of Bastrop, and State of Texas, aged 25 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is not acquainted with the complainants, but is acquainted with all the defendants.

2d. In answer to the second interrogatory to him propounded, he says, that he does know of a sale of a stock of goods made by defendant Nicholson to the defendant Moore, some time in the summer of the year 1851. He says he does not know the amount or quantity of goods sold. The defendants and himself resided in the town and county of Bastrop, Texas, at that time.

3d. In answer to the third interrogatory to him propounded, he says, that so far as he recollects, within a very short time previous to said sale, Nicholson was generally supposed to be solvent. Though there might have been many persons in the community who supposed he would break. For some several weeks previous to said sale, the pecuniary affairs of said Nicholson he understood were embarrassed. Since said sale Nicholson has been generally considered insolvent.

4th. In answer to the fourth interrogatory to him propounded, he says, that the first conversation he recollects to have had with defendant Moore, in relation to the sale or assignment by said Nicholson of his goods, took place whilst an invoice of the goods was being taken, he (witness) having a claim or debt against Nicholson, called at the storehouse where the goods were kept to see Nicholson, when a conversation took place between defendant Moore and himself.

It having been some time since said conversation took place, the substance of it, as well as he (witness) recollects, was in relation to his, witness', debt and Nicholson's object in making sale of his goods, and an assignment of his notes, accounts, &c., which at that time was in contemplation.

In this conversation he was assured by Moore that Nicholson intended to secure all his home creditors, and that his (witness') claim would be secured, so that he (witness) need apprehend no danger. That they all (Moore, Nicholson and the clerks) were busily engaged in completing the invoice as soon as practicable, lest the United States marshal might disconcert the arrangement. He (witness) does not recollect whether other claims were mentioned in this conversation, but thinks probably a claim in favor of Wm. D. C. Jones was. In a few days afterwards he, witness, sold his claim or debt against Nicholson to Moore, but at the same time was assured by Moore that his debt would be ultimately paid.

He does not recollect the conversation that occurred at the time he let Moore have his debt (if any), but thinks it was in substance about the same as that of the former conversation.

He does not recollect of ever having any other or further talk or conversation with Moore on the subject; neither has he ever heard any conversation between said Moore or any other person or persons on the subject asked; nor has he ever heard Moore make any statements about the subject-matter, except those he has already stated above.

5th. In answer to the fifth interrogatory to him propounded, he says, that he has some acquaintance with the handwriting of James Nicholson, and believes the letters and writing attached to the answers of Warren Larkins are in the handwriting of, and signed by, said Nicholson; he has seen Nicholson's handwriting before. Further deponent saith not.

G. W. JONES.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above depositions to writing, in the presence of the witness, Geo. W. Jones, and read the same to him; whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

Answers of C. C. McGinnis.

C. C. McGinnis, of the county of Bastrop, in the State of Texas, aged 27 years, was produced, and by me sworn, on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants, he deposes and says, as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is only acquainted with the defendants, but not with the complainants.

2d. In answer to the second interrogatory to him propounded, he says, that all he can state concerning the sale of a stock of goods by defendant Nicholson to the defendant Moore, the information

came to him as an attorney, and therefore he don't feel authorized to make any statement in the premises.

3d. In answer to the third interrogatory to him propounded, he says, that as to Nicholson's reputation, he was considered generally, so far as his (witness's) knowledge goes, to be insolvent after the sale of his goods; before that time he knew but little about him, or any one else in Bastrop, for he had been there but a short time, and had but little acquaintance.

4th. In answer to the fourth interrogatory to him propounded, he says, that as to the most of this interrogatory he can make no statement or answer, for the reason given in answer to the first interrogatory.

Though he heard defendant Moore say to some one—he does not recollect who, though he believes it was Mr. Wm. Dunbar—that he (Moore) saw that Nicholson would fail, and that it stood him in hand to save himself (Moore). This was in the summer of the year 1851, in the town of Bastrop.

5th. In answer to the fifth interrogatory to him propounded, he says, that he thinks the signature to said letter, purporting to be written by James Nicholson to F. W. Chandler, Esq., Austin, dated "Bastrop, July 18, 1853," is the signature of James Nicholson; and further he saith not.

C. C. McGINNIS.

And in answer to the cross-interrogatories propounded to C. C. McGinnis, he says:

1st. The first cross-interrogatory he says, that he has answered this interrogatory fully in answer to the direct interrogatories.

2d. To the second cross-interrogatory he says, that he does claim the privilege of an attorney, and so far as that is concerned, he refuses to disclose anything that came to him as an attorney.

3d. In answer to the third cross-interrogatory to him propounded, he says, that he does not know whether Nicholson ever offered the stock of goods for sale before that time (except to customers) or not; nor neither does he know at what price he (Nicholson) sold the goods to customers.

4th. In answer to the fourth cross-interrogatory to him propounded, he says, that he supposed Moore retailed goods, after his purchase from Nicholson, some nine or ten months, and then sold out to C. K. Hall, of Bastrop, what he had on hand; and further says, he knows nothing more to benefit either party; and further he saith not.

C. C. McGINNIS.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing depositions to writing, in the

presence of the witness, C. C. McGinnis, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

Answers of R. A. Rutherford.

Robert A. Rutherford, of the county of Bastrop, in the State of Texas, aged years, was produced, and by me sworn, on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants, he deposes and says, as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is not acquainted with the complainants, but he is acquainted with all the defendants.

2d. In answer to the second interrogatory to him propounded, he says, that he knows that defendant Nicholson made a sale of his stock of goods to defendant Moore in the summer of the year 1851; he don't know the amount of goods sold. The defendants and myself all reside in the town and county of Bastrop.

3d. In answer to the third interrogatory to him propounded, he says, he did not know much about the solvency or insolvency of Nicholson previous to said sale, nor did he know anything about his pecuniary situation previous to said sale; but immediately after the said sale, there was a general rush upon said Nicholson by all whom he owed, to save their debts or get something for their debts, under the impression that he (Nicholson) could not be able to pay them, and they lose their debts; and since the said sale, Nicholson has been reported to be insolvent.

4th. In answer to the fourth interrogatory to him propounded, he says, that he recollects he, previous to the said sale, in regard to Nicholson giving him (witness) an assignment of all his stock of goods and effects, for the benefit of his creditors; but what the substance of those conversations were particularly he does not now recollect, and he does not now recellect what he said to Moore on the subject, and do not recollect what Moore said (if he said anything) as to the objects or motives of Nicholson in selling or assigning his goods, or as to the pecuniary condition or indebtedness of Nicholson, and to whom and what sums. He never at any time talked or conversed with Nicholson about selling or assigning his goods or effects; and no authority was given him to make any statements on the subject. He don't recollect of ever hearing any conversation between Moore and any other person or persons, previous to, or after said sale, on the subject of the sale or assignment by Nicholson of his goods, or the solvency or insolvency of Nicholson, or the situation of his (Nicholson's) affairs, or one of a like nature, nor any statements made by Moore to any person at any time, on that subject, or one of the like nature, except this: after the purchase by Moore, of Nicholson, of the goods, and whilst Moore was occupying

the storehouse and selling the same goods, he (witness) heard a conversation between one T. W. House, Esq., of Houston, Texas, and said Moore, on the subject of Nicholson's failing; which conversation was begun by said House with Moore, in which said House told Moore "that he (House) knew of the embarrassed circumstances of Nicholson some time before he (Nicholson) went on to New York and purchased his last stock of goods and brought them to Bastrop," he (House) stating to Moore "that Nicholson was largely indebted to him (House), and that it was through his (House's) influence and recommendation that Nicholson got the goods in New York and Philadelphia; that soon after Nicholson's return with the said last stock of goods to Bastrop, he (House) made a push at him (Nicholson) and saved his debt, to an amount of near ten thousand dollars; that he (House) knew that was the only way he (House) had of getting his debt from Nicholson."

During this conversation between House and Moore, he (witness) recollects of nothing Moore said on the subject of Nicholson's motives or intentions, solvency or insolvency.

5th. In answer to the fifth interrogatory to him propounded, he says, he is acquainted with the handwriting of Nicholson; he examined the letter and handwriting attached to the answer of Warren Larkins, and believes them to be in the handwriting of Nicholson. He has Nicholson's handwriting and signature frequently.

In answer to the sixth interrogatory to him propounded, he says: That Nicholson did make an assignment to him of all his notes, accounts, books, bonds, &c., about the seventh of July, 1857. The aggregate amount of all notes, accounts, &c., assigned, was about twelve or fourteen thousand dollars, to the best of his recollection.

The amount of Nicholson's indebtedness, to the best of his recollection, that came to his knowledge after the assignment, was about twenty thousand dollars and upwards.

The amount that has been realized out of the assets so assigned, will not exceed six thousand dollars; and the utmost that can be realized out of all of said assets assigned, will be very little more, he thinks, than six thousand dollars, for the reason they are generally bad debts, and the debtors insolvent persons; many of the debts are in judgment and executions returned thereon unsatisfied.

The assignment was made thus: Nicholson divided the creditors into three classes: the first class named and referred to in the deed of assignment, was what he called his "home creditors," or those in Texas. The second was some three firms of foreign creditors of New York and Philadelphia. The third was creditors generally, in which class the complainants in this cause were included.

The proceeds of the collected assets out of the said funds, notes, accounts, &c., have been applied by me to the payment of the debts included in the deed of assignment.

R. A. RUTHERFORD.

And cross-interrogatories having been propounded to the said Robert A. Rutherford by the said defendants.

1st. In answer to the first cross-interrogatory propounded to him, he says, that he does recollect of having conversations with defendant Moore on the subject-matter referred to, but he does not recollect what was said, and all he recollects of ever hearing Moore say to any other person, is as stated in his answer to the fourth direct interrogatory.

2d. In answer to the second cross-interrogatory propounded to him, he says, that he does not know anything about the goods referred to. He further says, he knows nothing more on the subject-matter.

R. A. RUTHERFORD.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing, in the presence of the witness, R. A. Rutherford, and read the same to him, whereupon he subscribed his name thereto, as above written.

JAMES A. POAGE,
Commissioner.

Answers of Samuel Porter.

Samuel Porter, of the county of Bastrop and State of Texas, aged 34 years, was produced, and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants. He deposes and says, as follows:

1st. In answer to the first interrogatory to him propounded, he says: That he is not acquainted with the complainants, or either of them, but is acquainted with the defendants.

2d. In answer to the second interrogatory to him propounded, he says: That he does know that in the summer of the year 1851, the defendant Nicholson sold to the defendant Moore a stock of goods; he don't recollect the amount or quantity of goods so sold, but it was nearly the whole of the remaining stock of goods which said Nicholson had on hand at the time of said sale. There was a small quantity of goods which Nicholson then had taken by the agent of T. W. House, Esq., a merchant of Houston, in Texas. To the best of his recollection, the goods were purchased by said Moore from said Nicholson at twenty per cent. below the original cost in New York. Moore and Nicholson both resided at the time of said sale in the town and county of Bastrop, Texas, and that he was in the employ of said Nicholson, and keeping the store of goods as a salesman, and clerk for said Nicholson at the time of said sale of said stock of goods by Nicholson to Moore.

3d. In answer to the third interrogatory to him propounded, he says: That the pecuniary condition of Nicholson at the time of said sale of his stock of goods was, that he was in failing circumstances, and

hard pushed. He does not know what knowledge, or means of knowledge, or information said Moore had of the pecuniary condition of Nicholson's affairs. He does not recollect of hearing said Nicholson state in the presence of said Moore, before or at the time of said sale, or about that time, the condition of his pecuniary affairs, or his ability to pay his debts, or the cause of his selling his goods; whether he was indebted to the complainants, and his intentions as to paying, or any other matters of a like character.

The time that has elapsed since the transaction, has almost entirely erased from his mind and memory all the conversations and remarks that took place at the time between Moore and Nicholson, or between either of them, and any other person on the subject of the sale of said goods or Nicholson's circumstances or situation.

4th. In answer to the fourth interrogatory to him propounded, he says: That the contract or sale of the said stock of goods was concluded and closed one evening about eight or nine o'clock, P.M., by the parties signing the appropriate necessary papers, after talking about it and trying to make the trade for a day or two previous. When on the succeeding morning, himself and two or three men, together with said Moore and Nicholson, began to take an invoice of the stock of goods purchased by said Moore from Nicholson, and continued from day to day until they finished. A greater portion of the time they were taking the invoice; the doors were closed, but the windows were kept open; some time through the day the doors of the house (store) would be opened. The doors of the house were kept closed, so that they would not be molested by the people in taking the invoice. An invoice was taken and completed of the said stock of goods at the time of delivery, as above stated. The invoice was made out principally in the daytime; they also worked in the evening to the usual late hour when marking and putting up new goods.

Several persons assisted in taking the invoice, Mr. Wilson, Kennedy, Mr. S. C. Nolan, Mr. Jos. A. Campbell, and himself, with said Moore and Nicholson, and they were generally all present with some exception, during the whole time.

5th. In answer to the fifth interrogatory, to him propounded, he says, that Nicholson was, to the best of his knowledge, in failing circumstances at the time he made said sale of his goods to Moore. He believes that Moore had a knowledge of Nicholson's being in failing circumstances at the time of said sale. He does not recollect of ever hearing Nicholson say, before or at the time of said sale of the said stock of goods, in the presence of Moore, anything about his being unable to pay his debts, or the cause of his selling his entire stock of goods; neither does he, now, positively recollect what he may have heard Moore say, before the said sale, or six months thereafter, relative to his (Moore's) knowledge of Nicholson being in failing circumstances, or involved in debt at the date of his (Moore's)

purchase of said goods from Nicholson; neither does he now recollect of hearing Nicholson say to Moore, or in his presence, either before the sale, during the progress of the same, or during the time of taking an invoice of the goods sold, relative to his (Nicholson's) being indebted to the complainants, and to his intentions of paying the same. He never heard Nicholson say, in the presence of or to said Moore, anything about selling his property to prevent complainants from making it liable for their debts.

The goods were delivered by Nicholson to Moore, as he has already above stated. It was generally in the daytime, and the persons present as above stated. The goods were delivered in the town and county of Bastrop, in the State of Texas.

6th. In answer to the sixth interrogatory, to him propounded, he says, that there was a good deal of conversation and talk by and between many persons at or about the time of the sale of said goods, and of taking an invoice thereof, about and in relation to Nicholson's insolvency and pecuniary condition, but he does now recollect of making any statement to said Moore, or hear any other person make any statement to said Moore about or in relation to Nicholson's pecuniary situation, his indebtedness to the complainants, or any other person.

7th. In answer to the seventh interrogatory, to him propounded, he says, that he did not have any conversation with said Moore, to the best of his recollection, at or about the time of said sale, in regard to Nicholson's indebtedness to the complainants. Said Moore did speak to him just before he, Moore, concluded the purchase of the goods, and when he had it in contemplation to purchase the same; about remaining in the store, as a clerk and salesman for him, Moore, and stated that he wished him, witness, to remain. And after the sale and purchase of the goods he was employed by said Moore as a clerk and salesman in his store; having been previously discharged by Nicholson, at his, witness's, request. He further states that he knows of no other matter or thing in relation to this suit but what he has answered.

SAML. PORTER.

And cross-interrogatories having been propounded by the defendants to the said Samuel Porter,

1st. In answer to the first cross-interrogatory to him propounded, he says, that he does recollect that at or about the time an invoice of the said stock of goods was taking, William Larkins, as agent for T. W. House, Esq., of Houston, Texas, purchased or took out a portion of the said stock of goods of Nicholson to secure a debt due from Nicholson to said T. W. House; but what amount or quantity of goods was taken by said Larkins he does not know.

2d. In answer to the second cross-interrogatory, to him propounded, he says, that he does know that the defendant Nicholson

was indebted to the defendant Moore, at the time of the sale and purchase of said stock of goods, but he does not know in what amount. Defendant Moore informed him that said indebtedness was a part of the consideration of the purchase of said goods by him (Moore) from Nicholson, and that it was on account of said indebtedness that he, Moore, purchased said goods from Nicholson.

At the time of the sale he does not know that said Moore did know who the creditors of Nicholson were, or the amount owing each, or had any personal acquaintance with Nicholson's creditors or the complainants.

3d. In answer to the third cross-interrogatory, to him propounded, he says, that he had been the clerk of said Nicholson, in his store, for five or six months previous to the sale to said Moore of the goods. That many of the stock of goods were old and unsaleable. A large portion of the goods looked like they had been on hand a long time, and would not sell at a profit. Some of the goods, to his knowledge, after Moore bought them, were sold at ten per cent. below cost.

4th. In answer to the fourth cross-interrogatory to him propounded, he says, that he did aid in making and taking an inventory of the said goods sold by Nicholson to said Moore. The said goods were, to the best of his recollection, invoiced at New York costs, with ten per cent. added for the purpose of covering expense of transportation and carriage. After invoicing the goods at the marked costs there was then deducted ten per cent. from the whole amount, which was done on a fair invoice. He says that, considering everything, Moore paid Nicholson a full and fair price for said stock of goods. There were many of the said goods which were saleable without any fresh additions; then there was a large portion of them which wanted and required new supplies and additions to make a variety, in order to make the balance saleable in a usual town market. Moore, he thinks, could have paid all necessary expenses on said goods and made something, so as to cover the costs at least; but he does not believe the profits would of been so good and certain as if the goods had of been fresh in market.

5th. In answer to the fifth cross-interrogatory to him propounded, he says, that he remained with Moore, after he purchased the goods from Nicholson, as clerk and salesman, and said Moore, or rather Moore & Hill, purchased some new, fresh goods during the time, which was mixed with the old stock purchased by Moore from Nicholson, and those new goods which was purchased by Moore & Hill did add to the facility of the sale of the old stock of goods so purchased from Nicholson. He says he did not make up the invoice of the goods which Moore & Hill finally sold to Mr. C. K. Hall; that was made out, he believes, by Mr. J. A. Campbell. His understanding was that Moore & Hill let C. K. Hall have all the goods which was purchased from Nicholson by Moore at the same price he, Moore,

gave Nicholson for the stock of goods. Mr. C. K. Hall got all the goods left on hand from Moore & Hill, except a few goods which Moore & Hill subsequently gave away to their own slaves.

6th. In answer to the sixth cross-interrogatory to him propounded, he says, that said Nicholson's New York invoice prices of his goods, particularly those of Henry Sheldon & Co., were charged usually very high.

7th. In answer to the seventh cross-interrogatory, to him propounded, he says, that Moore was a man of good fortune, and might of easily obtained a credit in the wholesale market for goods, and could of purchased a stock of goods which he could of sold at a better profit than those he purchased from said Nicholson.

He does not think he could have taken the stock of goods purchased by Moore from Nicholson and sold them at a profit for cash, on the New York cost and carriage, and paid expenses, or made a living profit thereby, for the reason the goods were in rather a damaged condition, and some of them really not saleable at all. And further he saith not.

SAML. PORTER.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing, in the presence of the witness, Samuel Porter, and read the same to him, whereupon he subscribed his name thereto, as above written.

JAMES A. POAGE,
Commissioner.

Answers of W. T. Gamble.

William T. Gamble, of the county of Bastrop and State of Texas, aged 52 years, was produced, and by me sworn on the Holy Evangelists of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is acquainted with the defendants, and has no personal acquaintance with any of the plaintiffs.

2d. In answer to the second interrogatory to him propounded, he says, that he knows nothing of his own personal knowledge, excepting that he saw in possession of the defendant Moore a portion of the stock of goods, and information from Nicholson, and general rumor, which had belonged to Nicholson. He has no knowledge of the amount. All of said defendants was residing in the town and county of Bastrop, Texas, in the year 1851.

3d. In answer to the third interrogatory to him propounded, he he says, that, as far as his knowledge extends, James Nicholson, in the spring and summer of the year 1851, was considered as being embarrassed in his pecuniary affairs, and since that time he has been considered as insolvent.

4th. In answer to the fourth interrogatory to him propounded, he says: That he was then living in Webber's Prairie, Travis County, Texas. His occupation was in selling goods. As to the inquiry where he purchased goods in 1850 and 1851, he declines answering; not recognizing the right to inquire into his private affairs. He has some knowledge of the original costs of the goods he saw in possession of Moore, having previously examined the stock when in possession of Nicholson. The goods he did not consider worth New York cost. As evidence of that fact, he made an effort to select from the stock, when in said Nicholson's possession, goods to the amount of one thousand dollars, but did not get exceeding the amount of between six and seven hundred dollars; which was all that he was willing to take at original cost, conditioned that they were not to be paid for until he sold them. He would estimate the costs and charges of transportation, &c., at about 8 per cent. on the original cost.

5th. In answer to the 5th interrogatory to him propounded, he says: That previous to the time that the sale was said to have been made by Nicholson to Moore he had but little acquaintance with Moore, and have no knowledge of ever hearing him speak of Nicholson previous to the purchase, or until about the commencement of this suit.

6th. In answer to the sixth interrogatory to him propounded, he says: That he did not.

7th. In answer to the seventh interrogatory to him propounded, he says: That he did not.

8th. In answer to the eighth interrogatory to him propounded, he says: That he again repeats that he never had any conversation with Moore about his purchase from Nicholson until about the commencement of this suit; and he has no personal knowledge of the terms and conditions of the sale.

9th. In answer to the ninth interrogatory to him propounded, he says: That he is acquainted with the handwriting of James Nicholson; and the letters or writings shown him as attached to the answers of Warren Larkins he is satisfied is in the handwriting of James Nicholson.

10th. In answer to the tenth interrogatory to him propounded, he says: That some time after the sale he remarked to Nicholson that he, Nicholson, had made, if he, witness, had been correctly informed as to the terms, a very imprudent sale; that he, Nicholson, could have turned the goods over to his creditors for costs and charges. He, Nicholson, then replied to him, witness, that if Moore & Hill realized a good profit on the goods, he, Nicholson, was to have a portion. He, witness, believes he, Nicholson, said one-third. This conversation was in Bastrop, and he has no recollection of any person being present.

WM. T. GAMBLE.

And cross-interrogatories having been propounded to the witness, William T. Gamble, by the defendants,

1st. In answer to the first cross-interrogatory to him propounded, he says: That a short time previous to the transfer of the goods to Moore by Nicholson, he examined the stock; was offered such portions as he might select at New York cost. The goods was to be received by T. W. House, Esq., of Houston, in payment of a debt due him from Nicholson. He, witness, first agreed to take to the amount of one thousand dollars; but after making selections to an amount between six and seven hundred dollars, he declined taking any more, and was unwilling to take the amount selected, only upon the condition that he was not to pay House for the goods until he sold them. His reason for not taking more was, that he considered the goods high, the stock or assortment badly broken, and many of the goods badly damaged, or defaced from rough handling. A portion of the goods had been on hand some time, but the larger portion was fresh goods. The original invoices was not shown him. He depended on the word of Nicholson for the cost.

2d. In answer to cross-interrogatory second propounded to him, he says: That, as before stated, the assortment was badly broken. He did not consider a man could compete with the other stocks in Bastrop, without replenishing the stock, with any profits.

3d. In answer to cross-interrogatory third propounded to him, he says: That he again repeats that he did not have any conversation with Moore on the subject.

4th. In answer to cross-interrogatory fourth propounded to him, he says: That he knew a portion of the goods remained in Moore's hands some time. He was not often in Bastrop about that time, and knows nothing of his own knowledge how he, More, disposed of them.

5th. And to the fifth cross-interrogatory he says: That he was answered fully, as far as he recollects.

WM. T. GAMBLE.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above foregoing deposition to writing in the presence of the witness, Wm. T. Gamble, and read the same to him; whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

Answer of Jacob C. Higgins.

Jacob C. Higgins, of the county of Bastrop, in the State of Texas, aged 40 years, was produced and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:

1. In answer to the first interrogatory to him propounded, he says: That he is acquainted with two of the complainants, Henry Sheldon and Nelson Clements, and acquainted with all the defendants.

2. In answer to the second interrogatory to him propounded, he says: That he does know of a sale of a stock of goods from the defendant Nicholson to the defendant Moore in the summer of the year 1851. The amount and quantity of said stock of goods he does not know. The defendants resided in the town of Bastrop, and he resided in the county of Bastrop, about seven miles from the town.

3. In answer to the third interrogatory to him propounded, he says: That the reputation of defendant Nicholson generally in the community, for six months or thereabouts previous to the sale, and has been since that time, that of a bankrupt.

4. In answer to the fourth interrogatory to him propounded, he says: That he never did carry any communication or communications, either written or verbal, from either of the defendants to the other, at any time, either previous to or about the time of said sale, in relation to the sale of said stock of goods or property, or to either.

5. In answer to the fifth interrogatory to him propounded, he says: That he never had any conversation with the defendant Moore previous to said sale in regard to the pecuniary condition, solvency or insolvency, indebtedness or failing circumstances, of said Nicholson. That he, witness, had a conversation with said Moore some four or five months subsequent to said sale, and that conversation was concerning an account he, witness, had made with Moore, and which Nicholson had agreed to settle for him, witness. Said Moore then, in that conversation, told him, witness, that he, Moore, did not owe said Nicholson anything, and that he, witness, would have to pay to him, Moore, the said account; but the amount of said account was subsequently arranged through Nicholson. No other conversation took place between him, Moore, and him, witness, in relation to the pecuniary condition, solvency or insolvency, of said Nicholson subsequent to said sale.

6. In answer to the sixth interrogatory to him propounded, he says: That he never heard the defendant Moore make any statements in relation to the subject-matter referred to in this interrogatory, at any time.

7. In answer to the seventh interrogatory to him propounded, he says: That he never did make any statement, or hear any one else make any statement, in the presence of said Moore or any one else, at any time, in relation to the subject-matter referred to in this interrogatory.

8. In answer to the eighth interrogatory to him propounded, he says: That he never did give any information, or hear any one else

give any information, to the said Moore in relation to the subject-matter referred to in this interrogatory. Nor did he, witness, ever make any statement in the presence of Moore relative to the indebtedness of said Nicholson to complainants.

9. In answer to the ninth interrogatory to him propounded, he says, that he never did hear said Moore make any statement as to the reason of said Nicholson's selling his stock of goods and other property.

J. C. HIGGINS.

And cross-interrogatories having been propounded to the said Jacob C. Higgins by the defendants, in answer to the first cross-interrogatory to him propounded, he says, that he never had any conversation with defendant Moore in relation to the subject-matter referred to in this cross-interrogatory.

2d. In answer to the second cross-interrogatory to him propounded, he says, that Nicholson did propose to sell to him the same stock of goods he (Nicholson) sold to Moore at original cost, but he (witness) did not nor would not purchase them; first, because he did not wish to engage in the mercantile business; second, because he did not think anything could be made on the goods from the examination he made. The condition of the goods were bad, having been badly handled; Nicholson's house, when they were opened, being too small for such a stock. They were also very much culled. What they were worth he is not sufficiently versed in the mercantile business to be a judge. In answer further, he says he knows nothing more that will benefit either of the parties to the suit; and further he saith not.

J. C. HIGGINS.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced to writing the above foregoing deposition in the presence of the witness, Jacob C. Higgins, and read the same to him, whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

In faith of all which, I hereby return the interrogatories, depositions, commission, and agreement of the solicitors and papers in the testimony referred, to the said honorable court.

JAMES A. POAGE,
Commissioner.

Answers of R. H. Hall.

Robert H. Hall, of the county of Bastrop and State of Texas, aged thirty-eight years, was produced and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the complainants. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he is acquainted with the defendants, Thomas C. Moore, James Nicholson, and Rebecca H. Nicholson, but he is not acquainted with the plaintiffs, or either of them.

2. In answer to the second interrogatory to him propounded, he says, that some time in the month of May, A.D. 1852, Preston Conlie called upon him, representing himself as acting for the defendant James Nicholson, and requested him to purchase a note drawn by defendant Thomas C. Moore, dated some time in June of the previous year, payable to the defendant James Nicholson on the first of January, A.D. 1853, for five hundred dollars ($500). Previous to purchasing, he (witness) called on defendant Moore, and inquired if the note was good, and would be met at maturity; upon his answering in the affirmative, he (witness) returned and completed the negotiation with said Conlie, paying him three hundred and seventy-five ($375) dollars for the same. At the same time said Conlie presented him (witness) an open letter, directed to defendant Moore, and signed by defendant Nicholson, requesting him (said Moore) to execute a new note payable to him (witness). The same day he (witness) met defendant Moore in the street, and presented the letter to him, and he (Moore) signified his willingness to do so, and accordingly executed a new note, signed by the firm name of Moore & Hill. After executing said note, he (said Moore) remarked, "I will keep (or take care of) this letter, for I don't know what might happen." Upon witness asking him what he meant, he replied, "Jimmy is a little rascally, and it is well enough to have it (the said letter) to show." "But," he said, in continuation, "somebody would have made something out of the transaction, and I don't know why it should not be me (Moore) as well as anybody else." This is the substance of said conversation, and I think the words. I had no conversation with said Moore in relation to the consideration for which said note was given, nor in relation to the pecuniary condition, indebtedness, solvency, or insolvency of said Nicholson about the time said note was executed, or at any other time.

3. In answer to the third interrogatory to him propounded, he says, that he did not hear Moore say how much he made on the purchase of Nicholson's goods; and to the other questions pertaining to conversations by and with said Moore, he must give a general negative.

4. In answer to the fourth interrogatory to him propounded, he says, that he has heard defendant Nicholson make a statement on divers occasions, and in sundry places in the town of Bastrop, as to the character of the sale from him to defendant Moore. The conditions of said sale, as stated by said Nicholson, were, that the said Moore was to pay said Nicholson a certain per cent. on the New York cost of the goods; which per cent. he stated to me, but which I do not now recollect. That upon the sale of said goods by defen-

dant Moore, he (defendant Moore) was to pay to him (said Nicholson) a portion of the profits arising from said sale. He (Nicholson) likewise stated that the goods were ostensibly sold by him to said Moore at a certain per cent. below the New York cost, when, in reality, by a private understanding between said Nicholson and said Moore, they were sold at a greater per cent. below said cost. He says that he is acquainted with the handwriting of the defendant Nicholson, and on examination of the letter or writing marked Exhibit A., attached to the answers of Warren Larkins, Esq., he believes them to be in the handwriting of defendant James Nicholson. And further he saith not.

R. H. HALL.

And I, James A. Poage, the commissioner aforesaid, do certify that I reduced the above foregoing deposition to writing in the presence of the witness, and read the same to him. Whereupon he subscribed his name thereto as above written.

JAMES A. POAGE,
Commissioner.

District Court of United States for Texas.

HENRY SHELDON & Co.
v.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE.

The complainants in above cause to James A. Poage, commissioner.

To taking depositions of ten witnesses, 13,216 words at 20 cents per 100 words, ...	$26 43
To ten certificates, at 4 each, ...	5 00
Amount,	$31 43

United States of America.

In District Court of United States for the District of Texas.

HENRY SHELDON, NELSON CLEMENTS, and EDWARD A. SHELDON, complainants,
v.
JAMES NICHOLSON, REBECCA H. NICHOLSON, and THOMAS C. MOORE, defendants.

Answers of J. H. Gillespie.

James H. Gillespie, of the county of Bastrop, and State of Texas, aged 39 years, was produced, and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says, that he was *that he was* merchandising in the town and county of Bastrop at that time, and was a pretty close observer of all the stocks of goods brought to the place, and was frequently in the storehouse of Mr. Nicholson; when and where he had ample opportunity of forming a general knowledge of his stock of goods. The goods were purchased by Mr. Nicholson (at least, the principal part of his stock) in the fall of the year 1850; and when they were received in Bastrop, they were opened in two or three houses, and, he thought at the time, very badly handled, and must suffer considerable damage. He (Nicholson) afterwards procured a better house, and his goods then were kept in better order.

The stock of goods was very badly assorted, and at the time of sale to Moore, were, from being badly handled and exposed to dust, he (witness) considered damaged and unsaleable, and if sold, would not yield a profit upon invoice price.

2d. In answer to the second interrogatory to him propounded he says: That some time after Mr. Moore's purchase from Nicholson, he (Moore) proposed a partnership to him (witness) and offered to put in the stock he (Moore) had purchased from Nicholson, which he (witness) declined; he (Moore) proposed to put in the stock of goods so purchased of Nicholson, at costs; but he (witness) did not believe any money could be made off the goods.

3d. In answer to the third interrogatory to him propounded he says: That he does not recollect how long precisely said Moore kept said stock, but about ten months, he thinks. He (Moore) then sold the remaining stock on hand to C. K. Hall, merchant, of Bastrop. He (Moore) could not have done a profitable business without replenishing and keeping up a better stock. And he (witness) is fully satisfied without which he would have done but very little business, not sufficient to make it profitable.

To pay a profit to the merchant retailing goods in the way they are usually sold in this part of the country, should be sold at from 33⅓ to 75 per cent. on the kind of goods sold by Nicholson to Moore, and further saith not.

JAMES H. GILLESPIE.

And cross-interrogatories having been propounded to the witness, James N. Gillespie, by the complainants. In answer to the first cross-interrogatory to him propounded he says: That it was reported and generally believed, that Nicholson was insolvent, and would not be able to meet his liabilities, and he (witness) does not know that said Moore had any other knowledge than that of the common report. He does not recollect distinctly to have heard any one in particular, in the presence of said Moore, speak in regard to the condition of said Nicholson, but it was the frequent subject of conversation amongst the citizens; Nicholson afterwards told him (witness)

that his object in selling was to pay his debts, as far as his assets would go, and he does not now recollect that he spoke, specifying in particular any claim. He (Nicholson) said it was his intention, first, to pay his liabilities at home, then those from home. He (witness) does not recollect ever having heard Moore speak of the solvency of the said Nicholson. If he did, he did not now recollect, or of the intentions or motives of the said Nicholsonfor selling; and further saith not.

JAMES H. GILLESPIE.

And I, James A. Poage, the commissioner aforesaid, do hereby certify that I reduced the above depositions to writing, in the presence of the witness, and read the same to him, James H. Gillespie. Whereupon he subscribed his name thereto, as above written.

JAMES A. POAGE,
Commissioner.

Answers of L. C. Cunningham.

Leander C. Cunningham, of the county of Bastrop, and State of Texas, aged 44 years, was produced, and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows: In answer to the first interrogatory to him propounded he says: That he remembers the stock of goods in question. He considered them a very poor stock; many of them had been on hand several years, and such as had been brought into the store recently was badly selected, in his judgment; and the whole stock was handled roughly whilst in the hands of Nicholson. He never examined them very carefully, only saw them frequently in Nicholson's store. He does not know what their invoice value was, and cannot say how much they had depreciated while in the hands of Nicholson. He would make a very great difference between such a stock and that of a new stock, entirely purchased to suit the market. He thinks the difference equal to one half the value at least. He has been engaged as a merchant here since 1844.

2d. In answer to the second interrogatory to him propounded, he says: That he cannot say positively how long Moore kept any of the goods on hand. He does not think that they would have been all sold until now had they been kept separate from other goods. He does not think that any man could have taken the stock of goods as they were when Moore purchased them, and ever have sold enough out of them to pay the first costs, provided the costs was as much as new goods of the like description usually did cost, without replenishing and adding to the same. When goods are very ready sale, a small profit, say 10 per cent., will remunerate; but goods

which are very dull sale, will hardly remunerate at any per cent., and further he saith not.

L. C. CUNNINGHAM.

Answers of J. C. Radford.

J. C. Radford, of the county of Bastrop, in the State of Texas, aged 47 years, was produced, and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the defendant. He deposes and says as follows:

1st. In answer to the first interrogatory to him propounded, he says: That he was but partially acquainted with the stock of goods which defendant Thomas Moore purchased of the defendant James Nicholson in the year 1851. That he sold goods for the defendant Nicholson, in the year 1846, 1848, and 1849, and was in the storehouse of said Nicholson two or three times a week from that time until he sold out to Mr. Moore. He (witness) has sold goods for some 10 or 12 years. He took but little notice of the goods in Nicholson's store, after he left the store. To his knowledge, some of the goods had been on hand three or four years; some of the goods were badly kept, and consequently in a bad condition. He does not think the goods were worth original cost, and cannot say how much less. Mr. Moore was retailing the goods about nine or ten months, then sold out the whole stock to C. K. Hall, Esq., of Bastrop. He says, the probability of competing with other merchants in Bastrop, without replenishing his stock, was not very good, as the stock was much broken. The goods ought to have sold at about 33⅓ per cent. advance on original costs.

He does not know of anything more that would be a benefit to either of the parties, and further saith not.

J. C. RADFORD.

And I, James A. Poage, the commissioner aforesaid, do hereby certify, that I reduced the above deposition of L. C. Cunningham and J. C. Radford to writing, in the presence of the witnesses L. C. Cunningham and J. C. Radford, and read the same to each one of them. Whereupon they subscribed their names thereto as above written.

JAMES A. POAGE,
Commissioner.

Answers of Wilson Kenneday.

Wilson Kenneday, of the county of Bastrop, and State of Texas, aged 41 years, was produced, and by me sworn on the Holy Evangelist of Almighty God, and examined on the part and behalf of the defendants. He deposes and says as follows: In answer to the first direct interrogatory to him propounded, he says: He knows that

defendant Moore did purchase of defendant Nicholson, a stock of goods in the summer of the year 1851, in the town and county of Bastrop, Texas. He does not know what amount of goods Moore bought of Nicholson; an invoice of the goods so purchased was made out and taken by him (witness), Stephen C. Nolair, Esq., Samuel Porter, Esq., and defendants Moore and Nicholson. We commenced taking and making out the invoice of the said goods directly after the sale the next day, he believes. He does not now recollect the aggregate amount of the goods invoiced. The opportunities he had of knowing the fairness of the transaction was, that he was present for three days assisting in taking an invoice of the goods on the sale from Nicholson to Moore. The prices of the goods were set down as they were weighed and measured by said parties present, and all the goods, of which the weights and measures were not known from the original marks, was weighed or measured and remarked, and the prices and quantity thereof placed on the invoice.

He believes, from all the circumstances attending the transaction, that the sale of said stock of goods was then fairly and honestly made, and he still believes that said sale was fairly and honestly made, and for a valuable consideration paid by Moore to Nicholson. He was informed by both Nicholson and Moore, that Moore was to take the goods at twenty per cent. discount on the New York invoice cost. He believes that the goods were all very high at that price, particularly the woollen goods; for they all had been originally purchased at very high prices, and they were much injured in the handling and folding, being apparently very roughly put up. He (witness) was offered an interest in the stock of goods by Moore, after his purchase; but, he (witness) declined purchasing, for the reason he believed nothing could be made on the goods at the price Moore agreed to pay Nicholson for them, and further he saith not.

WILSON KENNEDAY.

And cross-interrogatories having been propounded to the witness Wilson Kenneday by the complainants, in answer to the first cross-interrogatory to him propounded, he says, that he did not know what the pecuniary condition of Nicholson was at the time he sold his stock of goods to Moore.

The general opinion in the community was, that he was embarrassed, and unable to pay his debts previous to said sale. He don't know what knowledge, or means of knowledge, or information said Moore had of the pecuniary condition of Nicholson's affairs. He never heard Nicholson or any other person state to or in presence of Moore, what was the pecuniary condition of Nicholson, his solvency or insolvency, either before or after the sale. He never heard Moore say anything at all about the pecuniary condition of Nicholson, before, at, or after the sale.

The goods were turned over to Moore at the time of the sale, or as they were invoiced, as stated in his answer to the direct interro-

gatories, and in the daytime; the invoice was taken in the daytime, and the goods fully turned over after the invoice was made.

He understood from Nicholson, that the reason why he sold his goods was, that he wished to pay his debts, as far as they would go in payment, and that was his motive and intention, as he (witness) learned from Nicholson and that true, and no other.

2. In answer to the second cross-interrogatory, he says, he never heard the defendant Moore say, or admit, that he (Moore) knew that Nicholson made the sale to him (Moore), with purpose and intention of evading, hindering, prolonging, and delaying the recovery of the debt of the complainants, or any other person; and further he saith not.

WILSON KENNEDAY.

And I, James A. Poage, the commissioner as aforesaid, do hereby certify, that I reduced the above deposition to writing, in the presence of the witness Wilson Kenneday, and read the same to him, whereupon he subscribed his name thereto, as above written.

JAMES A. POAGE,
Commissioner.

In faith of all which, I hereby return the interrogatories, depositions, commission and agreement of the solicitors, and papers in the testimony referred, to the said honorable court.

JAMES A. POAGE,
Commissioner.

United States of America, District of Texas.

Fall Term 1854, at Austin.

HENRY SHELDON & Co.
v.
THOMAS C. MOORE and
JAMES NICHOLSON.
} In Chancery.

Interrogatories and Cross-interrogatories to L. D. Hill.

Interrogatories to be exhibited to L. D. Hill, witness residing in the county of Travis, State of Texas, to be produced, sworn, and examined in a certain cause now depending and at issue in the District Court of the United States for the District of Texas, at Austin, in chancery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon are complainants, and James Nicholson and Rebecca H. Nicholson, his wife, and Thomas E. Moore are defendants in the part of complainants, and in their behalf.

First. Are you or not acquainted with the parties to this suit, or any, and which of them?

Second. Do you or not know of a sale of a stock of goods by the defendant James Nicholson, to the defendant Thomas C. Moore, about the summer of the year 1851; if so, state the amount of the goods so sold? Where did the defendant reside at that time? Where did you reside?

Third. What was the general reputation of the said Nicholson in the community where he lived as to solvency and pecuniary situation previous to and at the time of said sale, and what has it been since?

Fourth. Did you or not ever hear the defendant Moore make any statement of his knowledge of the pecuniary condition, solvency, insolvency, or failing circumstances, or indebtedness of said Nicholson, at the time of said sale?

Fourth. State whether or not you were present or in the room at the time the transfers or deeds were drawn up from Nicholson to Moore? Was Moore present at the time, or any part of the time? Was it in the day or nighttime? Please state whether or not you heard the said Moore at that time, or at any time previous to said sale, or within six thereafter; make any statement of the condition, or any statement of his knowledge of the pecuniary condition, solvency, insolvency, indebtedness, or failing circumstances of said Nicholson at the time of said sale? or whether or not you heard any other person, and what person, make any statements to, or in the presence of said Moore, relative to the pecuniary condition, solvency, insolvency, indebtedness, or failing circumstances of said Nicholson; if so, state all of said conversation or statements as near as you can?

HAMILTON & CHANDLER,
Sols. for Complainants.

Cross-interrogatories to L. D. Hill.

Cross-interrogatory first. If, in answer to the fourth direct interrogatory, you say, that about the *the* time Nicholson sold Moore a stock of goods, he (Moore) made any statements about Nicholson's solvency, then say if he (Moore) did not say that Nicholson owed him? and that his (Moore's) first object was to secure the debt? and, if he spoke in regard to the pecuniary condition of Nicholson, did he speak from rumor, or from his personal knowledge?

Cross-interrogatory second. If you say you were present at the time the transfer or sale was made, then say if an account of stock was not taken? And say at what prices were the goods charged? What was the condition of those goods? How long had they been on hand? How had they been handled, and how culled? What was their value compared with New York cost? What was the possibility of retailing them off at cost, after paying expenses, rents,

&c.? To do so, would it not have been absolutely necessary to replenish the stock? Give your opinions, with your reasons.

S. C. BLANTON,
J. A. & GEO. W. PASCHAL,
Sols. pro Defts.

Agreed, that the answers to these interrogatories may be taken upon the original interrogatories with the same effect as though the case was at issue; the examination to be taken before Thomas H. Duval, or W. P. de Normandie, commissioners, Austin, 1st June, 1854.

GEO. W. PASCHAL,
Sol. pro Defts.

Deposition of L. D. Hill.

The United States of America, District of Texas, at Austin.

Be it remembered, that on this the eighteenth day of November, in the year of our Lord one thousand eight hundred and fifty-four, I, William P. de Normandie, a commissioner duly appointed by the District Court of the United States for the District of Texas aforesaid, under and by virtue of an agreement between the parties in a certain cause now depending and undetermined in the District Court of the United States for the District of Texas, at Austin, in chancery, wherein Henry Sheldon, Nelson Clements, and Edward A. Sheldon are complainants, and James Nicholson and Rebecca H. Nicholson, his wife, and Thomas C. Moore are defendants, did, at the request of the complainants, call, and cause to be, and personally appear before me at my office, in the city of Austin, in said State and district of Texas, Lafayette D. Hill, of the county of Travis, in said State, to testify and the truth to say on the part of the complainant.

And the said Lafayette D. Hill, being of sound mind and lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, was carefully examined by me, and did thereupon depose and say in answer to the original interrogatories as follows, that is to say:

To the first interrogatory he says: I am acquainted with Thomas C. Moore and James Nicholson, not with the complainants.

To the second interrogatory he says: I have no distinct recollection at this time of any sale of goods by Nicholson to Moore, though it was generally understood that Moore had purchased Nicholson's stock. I do not know the amount said to be so sold. The defendants Moore and Nicholson both resided in Bastrop; I also resided in Bastrop.

To the third interrogatory he says: At the time Moore took pos-

session of said goods, Nicholson was generally understood to be insolvent; until that time he was considered solvent, since then he has been considered insolvent.

To the fourth interrogatory he says: I have no recollection of hearing Moore make any statement in relation to the pecuniary condition of Nicholson at or about that time, or of his indebtedness. I was in the same room with Moore and Nicholson while they were transacting business, and having papers of some kind drawn up, but do not know what they were or their contents of my own knowledge. Moore was present; it was in the daytime. I may have heard Moore make statements in regard to the pecuniary condition of Nicholson at that time, as it was a subject of general conversation, but have no distinct recollection what any person said. I do not recollect of hearing any person say anything to Moore in regard to Nicholson's pecuniary condition.

To the first cross-interrogatory he says: I have said I have no recollection of hearing Moore make any statement about Nicholson's solvency. I do not know of the indebtedness of Nicholson to Moore.

To the second cross-interrogatory he says: I do not know whether an account of stock was taken. Before Moore took possession of the goods they had been pretty well culled. I do not know their value compared with New York cost. I think they may have been sold for cost, as I purchased before Moore took possession, and saved myself from any loss. I paid 20 per cent. above New York cost.

L. D. HILL.

Sworn to and subscribed before me this 18th day of November, A.D. 1854.

W. P. DE NORMANDIE,
United States Commissioner for the District of Texas.

And I, William P. de Normandie, the commissioner aforesaid hereby certify that on the day and year first before mentioned, I was attended by the said witness L. D. Hill at my office in the city of Austin, and thereupon the above depositions were taken and reduced to writing by me in the presence of said witness, and from his statements, and after carefully reading the same to said witness, he subscribed his name thereto as above written. I have retained the said deposition in my possession for the purpose of sealing the same and placing it in the clerk's office of the District Court of the United States for the District of Texas, at Austin.

Witness my hand and seal as commissioner at Austin,
[SEAL.] this the 18th day of November, A.D. 1854.

W. P. DE NORMANDIE,
U. S. Commissioner.

Evidence. Copy of Judgment.

And thereupon afterwards, to wit, at the November term of said court, in the year of our Lord one thousand eight hundred and fifty-five, the following copy of a judgment was read in evidence in the words and of the tenor following, to wit:

In District Court, May 26th, 1853.

JAMES NICHOLSON AND WIFE
v.
JOHN HEARN, J. D. SCOTT et al.

In this cause this day came the parties by their attorneys, and agree that the following shall be the judgment of the court in this case. The injunction granted by the court, enjoining the sale of farm lots Nos. 65, 62, and 70, shall be made perpetual, and the same is hereby perpetual by the judgment of the court. And it is further ordered that the defendant Thomas C. Moore make and execute to the plaintiff Rebecca H. Nicholson, full and complete titles to the said lots Nos. 65, 62, and 70, in accordance with his agreement. And it is further ordered, adjudged, and decreed that the undivided half of fractional lot No. 4 shall be sold by the sheriff of Bastrop county for cash to the highest bidder, to satisfy the claim of the defendant John D. Scott against the said James Nicholson. And it is further ordered, adjudged, and decreed that the defendant John D. Scott have and and recover of the plaintiff James Nicholson the cost of suit in this behalf expended, for which execution may issue.

S. C. BLANTON,
Attorney for Plaintiffs.
W. LARKINS.

The State of Texas, County of Bastrop.

I, H. S. Morgan, clerk pro tem. of the District Court of Bastrop County, certify that the foregoing is a true copy of the judgment in the case of Jas. Nicholson and wife *v.* John Hearn, John D. Scott et al., as found in the minutes of said court at the Spring term, A.D. 1853.

Atttest, H. S. Morgan, clerk pro. tem. District Court,
[SEAL.] Bastrop County, with official seal affixed at office in the town of Bastrop, Dec. 15th, A.D. 1856.

H. S. MORGAN,
Clerk p. t. D. C. C. B.

And thereupon afterwards, to wit, on the twenty-eighth day of December in the year of our Lord one thousand eight hundred and

fifty-five, the court here rendered judgment and decree in this case, in the words and tenor following:

Decree.

HENRY SHELDON & Co., NELSON CLEMENTS, EDWARD A. SHELDON, complainants,
v.
JAMES NICHOLSON, THOMAS C. MOORE, REBECCA H. NICHOLSON, defendants.
No. 1. In Chancery.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that as to Rebecca H. Nicholson the bill be dismissed.

It is further ordered, adjudged, and decreed that the sale of the stock of goods, wares, and merchandise, sold by Nicholson on the 5th of July, A.D. 1851, was fraudulent, and intended to delay, hinder, and defraud his creditors, and therefore the same is annulled and set aside.

It is further ordered, adjudged, and decreed that the said Rebecca H. Nicholson recover her costs.

(Signed) JOHN C. WATROUS.

It is therefore ordered that the complainants have and recover of and from the defendants James Nicholson and Thomas C. Moore all costs in this behalf expended, for which execution may issue.

And afterwards, to wit, on the 9th day of November, A.D. 1860, came the appellant Thomas C. Moore, by his solicitors J. A. & Geo. W. Paschal, and filed their assignment of errors in words to wit:

In the United States District Court for the Western District of Texas, at Austin.

THOMAS C. MOORE, defendant and appellant,
v.
HENRY SHELDON et al., complainants and respondents.

And now comes the said Thomas C. Moore and says, that in the record and proceedings in this cause had, there is error in this, to wit:

1. That the court rendered a decree declaring the sale from Nicholson to Moore void, and set the sale aside, when, under the evidence, the sale was valid.

2. The court erred in rendering a decree for costs against the said Moore.

And for these and various other reasons, apparent upon the record, the said Moore prays that the judgment be reversed.

J. A. & GEO. W. PASCHAL,
For Moore.

Filed ninth day of November, 1860.

MATTHEW HOPKINS,
Clerk.

United States of America. District Court of the United States for the Western District of Texas, at Austin holding sessions.

I, Matthew Hopkins, clerk of the District Court of the United States for the Western District of Texas, at Austin, hereby certify the foregoing pages, numbered from one to one hundred and eighty-four, inclusive, to be a full, true, and faithful transcript of the record and all the proceedings had in the cause numbered one on the chancery docket of this court, entitled Henry Sheldon & Co. *v.* James Nicholson, Thomas C. Moore, and Rebecca H. Nicholson.

In testimony of which I have hereunto set my hand and the impress of the seal of the court, as well as the seal of [SEAL.] the United States District Court for the District of Texas, at Austin, Austin, the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty.

MATTHEW HOPKINS,
Clerk.

For appellants.

Supreme Court of the United States,

DECEMBER TERM, 1867.

NOS. 17 AND 18.

NELSON CLEMENTS and EDWARD A. SHELDON, *Appellants*, against THOMAS NICHOLSON, THOMAS C. MOORE, and another, *Appellees.*	Cross Appeals from District Court for the Western District of Texas.
THOMAS C. MOORE, *Appellant*, against NELSON CLEMENTS and EDWARD A. SHELDON, *Appellees.*	

Supreme Court of the United States,

DECEMBER TERM, 1867.

NOS. 17 AND 18.

NELSON CLEMENTS and EDWARD A. SHELDON, *Appellants*, against THOMAS NICHOLSON, THOMAS C. MOORE, and another, *Appellees*.	Cross Appeals from District Court for the Western District of Texas.
THOMAS C. MOORE, *Appellant*, against NELSON CLEMENTS and EDWARD A. SHELDON, *Appellees*	

ABSTRACT OF THE CASE.

James Nicholson, a merchant at Bastrop, in Texas, had, before the 13th of March, 185[illegible], become indebted to Henry Sheldon & Co. in the sum of $10,691.06 (pp. 6 and 19), and while thus indebted made to Moore conveyances and transfers of goods and property, which they allege to be fraudulent and void as to creditors. He (N.) having, on the 30th of April, 1851, executed to them a note for that debt (p. 10), and they having obtained judgment, the execution whereon was returned no property to be found (pp. 11, 12), they filed their bill in July, 1853 (pp. 5, 6), setting forth the circumstances under which the conveyances and transfers above mentioned were made. The real property consists of lots which are designated in an amended petition, p. 14, and the conveyances whereof from Nicholson to Moore are pp. 15, 17, 18. Page 21 is the answer of Nicholson, and p. 25 that of Moore. After the affidavit (p. 30) there was filed by consent (p. 33) an amended bill (p. 30 to 33), including further allegations, and propounding interrogatories to Nicholson and Moore, and making Mrs. Nicholson a party. Page 34 to 36 is the answer of Nicholson. Page 36 to 38 is the answer of Moore. Pages 39, 40 is the answer of Mrs. Nicholson. Issues having been joined (pp. 40, 41), there

were filed interrogatories to witnesses for complainants, and cross interrogatories. Pages 42, 43 are interrogatories to Samuel Porter and cross interrogatories; pp. 45, 48, interrogatories to Warren Larkens and cross interrogatories; pp. 46, 47, 48, interrogatories to C. K. Hall and cross interrogatories; pp. 49, 50, interrogatories to Wm. T. Gamble and cross interrogatories; p. 51 interrogatories to George W. Jones; p. 52 interrogatories to Robert A. Rutherford; p. 54 interrogatories to Wm. Dunbar; pp. 54, 55, 56, interrogatories to Jacob Higgins and cross interrogatories; pp. 56, 57, interrogatories to C. C. McGinnis and cross interrogatories; pp. 57, 58, 59, interrogatories to Thos. J. B. Hill and cross interrogatories; pp. 59, 60, interrogatories to Robert H. Hall. There are also interrogatories to witnesses for defendants, to-wit: Pages 60, 61, interrogatories to Horace Gillespie and cross interrogations; p. 62, interrogatories to L. C. Cunningham and J. C. Redford; p. 63, interrogatories to Wilson Kennedy and cross interrogatoaies. After which come the depositions.

As to the bad credit of Nicholson previously to the time of sale to Moore, his great pecuniary embarrassment at that time and his utter insolvency since, evidence is given by witnesses for defendants as well as plaintiffs, to-wit: For defendants, Gillespie, p. 90, Kennedy, p. 93, L. D. Hill, p. 96; and for plaintiffs in answers of Larkens, pp. 65, 66, to interrogatories third and fourth; of Thos. J. B. Hill, p. 70, to third, fourth, and fifth interrogatories; of Wm. Dunbar, p. 72, to third and fourth interrogatories; of Geo. W. Jones, p. 79, to third interrogatory; of C. C. McGinnis, p. 75, to third interrogatory; of Higgins, p. 85, to third interrogatory, and of Porter, to third interrogatory, p. 79, and fifth interrogatory, p. 80. The latter expresses the belief that Moore had a knowledge of Nicholson being in failing circumstances at the time of the sale, and there is other evidence to this effect. Nicholson in his answer, p. 24, says that he informed Moore that he was pressed and embarrassed for want of money to meet his bills then due. He thinks that he informed Moore before the sale thas he was indebted to the complainants—that he purchased the greatest portion of his stock from them. Rutherford, besides his answer, p. 77, to fourth interrogatory, deposes, p. 77, in answer to third interrogatory, that immediately after the sale there was a general rush upon Nicholson by all whom he owed, to get something for their debts, under the impression that he could not be able to pay them. And since the sale, Nicholson has been reported to be insolvent. In answer to 6th interrogatory, p. 73, he speaks

of Nicholson's assignment to him of bonds, notes, books, &c., what was realized therefrom, the creditors to whose payment these assets have been applied, and the amount of Nicholson's indebtedness.

As to the quantity and value of the goods embraced in the transfer to Moore, there is evidence in the answer of Larkens to second cross interrogatory, p. 67; answer of Thos. B. J. Hill to second interrogatory, p. 70, and second and third cross interrogatories, p. 71; answer of Wm. Dunbar, p. 72, to second interrogatory; answer of G. W. Jones to third interrogatory, p. 74, and answer of McGinnis to fourth cross interrogatory. Porter was in the employ of Nicholson, and was keeping the store of goods as salesman and clerk for him at the time of the sale to Moore. In answer to the second interrogatory, p. 79, he says to the best of his recollection the goods were purchased by Moore from Nicholson at 20 per cent. *below* the original cost in New York. He speaks further on the subject in answer to third and fourth cross interrogatories.

On the same subject are also depositions of defendants' witnesses, to-wit: Pages 89, 90, Gillespie; p. 91, Cunningham; p. 92, Radford; p. 93, Kennedy, and p. 97, L. D. Hill. This witness, speaking of the goods, says: "I do not know their value compared with New York cost. I think they may have been sold for cost, as I purchased before Moore took possession, and saved myself from any loss. I paid 20 per cent. *above* New York cost." Nicholson, in his answer, p. 23, admits that it "is usual among merchants in the town of Bastrop to mark their goods for retail at *thirty-five per cent. above* New York cost, and add thereon ten per cent. for charges of transportation."

It appears (p. 66) that Larkens suggested to Nicholson to make an assignment for creditors, and suggested Moore as a suitable man to close up the business; and after conversation between Nicholson and Moore an assignment was drawn up, but afterwards Moore concluded instead of taking an assignment to purchase the goods absolutely. The mode of proceeding is deposed to by *Porter*, p. 79, in answer to fourth interrogatory and fifth cross interrogatory, and by Geo. W. Jones, p. 74, in answer to fourth interrogatory. Gamble deposes, p. 84, in answer to tenth interrogarory, "that some time after the sale he remarked to Nicholson that he, Nicholson, had made (if he, witness, was correctly informed as to the terms) a very imprudent sale; that he (Nicholson) could have turned the goods over to his creditors for costs and

charges. He (Nicholson) then replied to him (witness) that if Moore & Hill realized a good profit on the goods he (Nicholson) was to have a portion; he (witness) believes he (Nicholson) said one-third." This evidence of fraud is supported by the answer of Higgins to fifth interrogatory, p. 86, and yet more strongly by the deposition of Robert H. Hall. In answer to second interrogatory he speaks of a note from Moore to Nicholson for $500, sold by Nicholson's agent to Hall, and in lieu of which Moore executed a new note to Hall, pursuant to the request of Nicholson in a letter to Moore. Hall deposes, p. 88, as follows: "After exhibiting said note, he, said Moore, remarked, 'I will keep' (or take care of) 'this letter,' (referring to the aforesaid letter) 'for I don't know what might happen.' Upon witness asking him what he meant, he replied, 'Jimmy is a little rascally, and it is well enough to have it to show' (the said letter). 'But' (he said in continuation) 'somebody would have made something out of the transaction, and I don't know why it should not be me (Moore) as well as anybody else.'" In answer to the fourth interrogatory, speaking of the character of the sale from Nicholson to Moore, he says, p. 88: "The conditions of said sale, as stated by said Nicholson, were that said Moore was to pay said Nicholson a certain per cent. on the New York cost of the goods, which per cent. he stated to me, but which I do not now recollect—that upon the sale of said goods by defendant Moore he, defendant Moore, was to pay to him, said Nicholson, a portion of the profits arising from said sale. He, Nicholson, likewise stated that the goods were ostensibly sold by him to said Moore at a certain per cent. below the New York cost, when in reality, by a private understanding between said Nicholson and said Moore, they were sold at a greater per cent. below said cost."

Further evidence of fraud is contained in the letter and communication, pp. 68, 69, proved to be in Nicholson's handwriting. (See pp. 67, 73, 75, 78, *et seq.*) Although according to the sale and delivery before Porter, the discount as stated in his evidence (*vide* p. 79,) was only *twenty* per cent. below New York cost, yet it appears that it was in fact *thirty* per cent. below New York cost. Nicholson, in his communication, speaking of Moore, says: "He told me that he had been speaking to some of my friends, and they advised me to let them go at 30 per cent below New York cost, and that I had better do it, and if he made anything he would share it with me; or perhaps he first said he would give me something handsome, but afterwards said he would share it.

During the last court-week he told me he was going to make something out of the goods; that he would share it with me, as it was always his intention." Nicholson says further: "Moore and Hill sold out to Hall at the same prices Moore got them from me. Moore first told Hall they were twenty-five per cent. discount. Hall asked me. I told him the truth. Then the discount was *thirty* per cent. agreed upon by them." To the like effect is the letter, p. 68. After mentioning that he, Nicholson, had offered the goods to Moore at 10 per cent. below cost and there was no agreement, Nicholson in his letter makes this statement: "I then said 20 or 25 per cent.; Moore did not agree, but afterwards came to me and said my friends said I ought to sell him the stock at 30 per cent. below New York cost, and if I did so he would share with me the profits, as it was necessary for every man to protect himself and family; that I should make provision to pay all my Texas debts; those I preferred in New York, but Sheldon's I ought to leave till the last." The letter closes with this language: "I wish everything to come out, that I may clear myself before the world of supposed villainy. Once clear, I will show you an experienced man, one whose mind has been dejected by *forced secrecy* of facts, to secure his supposed friend."

As to the lots, it is stated in Nicholson's answer, p. 24, that Moore purchased the same, "*paying therefor* the sum of $860;" and in Moore's answer, p. 27, that they were purchased by him and *paid for* in good faith;" that on the 12th day of June, 1851, he purchased the lots for the sum of $860, all of which was *paid* in like good faith." Yet it is stated in the deposition of Dunbar, p. 73, that when he, as an officer, was taking the acknowledgment of Nicholson and wife to the execution of the deed of conveyance for the lots, Moore, in the presence of Nicholson and wife, went through the form of saying that they were in consideration of debts owing from Nicholson to Moore for property sold and money loaned; and the witness was asked by Moore and Nicholson to take notice that the conveyance was made for the purpose of transferring to Moore sufficient property to cover said indebtedness. On this subject something else appears in the answer of McGinnis, p. 75, to fourth interrogatory; and the answer of Porter, p. 81, to second cross interrogatory.

The answer of Nicholson, p. 24, mentions an agreement for repurchase of the lots, and a decree as to the title. That decree is impeached as fraudulent, pp. 31, 32. A copy of it is p. 98. According to it Moore was to convey to Mrs.

Nicholson lots No. 65, 62 and 70, embraced in the deed, p. 15, and to satisfy a claim of Scott against Nicholson, the sheriff was to sell the *undivided half* of fractional lot No. 4. This, Nicholson says, p. 68, was at his request. The decree makes no provision as to the other half of fractional lot No. 4 embraced in the deed, p. 18; nor as to the block of lots No. 95 embraced in the deed, p. 17.

Moore, in his answer, p. 28, states that he agreed with Nicholson that the lots might be repurchased for the same sum of $860, with interest thereon at 10 per cent. per annum, and states further that the purchase money was paid to him by Mrs. Nicholson. The amended bill insists, p. 32, that if any such consideration did in fact pass, this purchase or redemption in the wife's name did not exempt the lots from liability to complainants' judgment; and it is prayed that the same be declared subject thereto and ordered to be sold in satisfaction thereof. To avoid this view a feeble effort is made in the answer of Nicholson, p. 35, and of his wife, p. 39. Moore admits, p. 38, that "he was paid for his title, and has no claim whatever to the property;" and according to the answers of Mr. and Mrs. Nicholson the payment to Moore was made with two notes of his to Nicholson for about $500 each. Those notes of Moore to Nicholson were surrendered to Moore in discharge of his claim on Nicholson. See page 39.

The court decreed that the sale by Nicholson of the stock of goods was fraudulent, and intended to delay, hinder and defraud his creditors, and annulled and set aside the same, and ordered that the complainants recover costs from James Nicholson and from Moore; but the court dismissed the bill as to Mrs. Nicholson, and decreed that she recover her costs.

From this decree there are two appeals. No. 17 is the appeal of Clements & Sheldon, and No. 18 the appeal of Moore.

POINTS AND AUTHORITIES.

I. The transaction between Nicholson and Moore was contrived of fraud, with intent and purpose to delay, hinder, or defraud Sheldon & Co. of their just and lawful debt, and as against the complainants is clearly and utterly void; and the decree is right so far as it annulled and set aside the same. Hartley's Dig., Art. 1452, p. 454; *Briscoe* vs. *Bronaugh*, 1

Texas R., 535; *Thompson* vs. *Shannon*, 9 Id., 538; *Mosely* vs. *Gaines*, 10 Id., 393; *Waicott* vs. *Brander*, Id , 424; *Edrington* vs. *Rogers*, &c., 15 Id., 188; *Hancock* vs. *Horan*, Id., 507; *Linn* vs. *Wright*, &c., 18 Id., 317; *Mills*, &c., vs. *Howeth*, 19 Id., 257; *Humphries* vs. *Freeman*, 22 Id., 45; *Castro* vs. *Illies*, Id., 480; *Weisiger* vs. *Choisholm*, &c., Id., 670; *Baldwin* vs. *Peck*, &c , Id., 708; *Howerton* vs. *Holt*, 23 Id., 52; *Gibson* vs. *Hill*, Id., 77; *Green* vs. *Banks*, 24 Id., 508. These cases show the construction of the statute of Texas given by the highest judicial authority of the State, and by that construction the Supreme Court of the United States is governed. *Sumner*, &c., vs. *Hicks*, &c., 2 Black, 534.

II. There having been a collusive combination to injure and defraud Sheldon & Co , Moore has no lien upon the property prior to them; he cannot claim that the transfer by him shall stand as security for money advanced by him. *Wright* vs. *Hancock & Co.*, 3 Munf., 534; *Sands* vs. *Codwise*, &c., 4 Johns. Rep., 585, 598; *Bean* vs. *Smith*, &c., 2 Mason, 252; *Miller* vs. *Tolleson*, So. Car. Eq. R., 162; *Garland* vs. *Rives*, 4 Rand , 315. Acquiring the title by fraud, he must be held to be a trustee for the injured person, although he did not intend to acquire the property in that character. *Coleman* vs. *Cocke*, 6 Rand., 642; *Price's adm'r* vs *Boswell*, 3 B. Monroe, 21. If the stock of goods had remained in kind in Moore's hands, the Court might have directed him to surrender the goods to an officer or commissioner of the Court, and directed the commissioner to sell the same to satisfy the judgment. *Birdwell* vs. *Butler*, &c., 13 Texas, 338. As there could not be such surrender of the goods in kind, the Court might have directed a commissioner to ascertain the value of the goods at the date of the transfer from Nicholson to Moore (*McNew* vs. *Smith*, 5 Grat., 84), and directed such value, with interest thereon, to be applied to pay complainants' judgment. *Henley's adm'r* vs. *Perkins*, &c., 4 Grat , 616; *Williamson's ex'r* vs. *Goodwyn*, &c., 9 Id., 503. In the absence of such report there may be, and now ought to be, a decree upon Moore's admission in his answer, p. 26 (and also on p. 28), "that the goods purchased by him at the New York invoiced prices amounted to $7,887.25." According to Nicholson's answer, p. 24, the goods sold by him to Moore amounted at New York cost to the sum of $7,887 65, "to which he adds 10 per cent for costs and charges, making the sum of $8,556.72." The decree against Moore should be for a principal sum, if not of $8,

556.72, at least of $7,887.25 with interest from the date of the sale to him, to-wit: the 7th of July, 1851.

III. The purchase of the lots in the name of the wife was fraudulent as against creditors. *Coleman* vs. *Cocke*, 6 Rand., 641. There is no proof of any such previous agreement or previous consideration as is requisite to sustain a post-nuptial settlement by the husband. *Blow* vs. *Maynard*, 2 Leigh, 48; *Lewis, &c.*, vs. *Caperton's adm'r, &c.*, 8 Grat, 165, 166. The transaction, even as stated by Mrs. Nicholson, p. 39, was in substance and effect a post-nuptial gift, by a husband who was indebted to insolvency; the manifest object of the gift being to hinder and defraud his creditors. *Parish, &c.*, vs. *Murphree, &c.*, 13 Howard, 93; *Reynolds* vs. *Lansford*, 16 Texas, 293. Such is the nature and effect of the transaction, whether regard be had to the rules of the common law recognized in *Owen* vs. *Tankersley*, 12 Texas, 407, and *Hawkins* vs. *Lee*, 22 Id., 544; or to the acts of Texas of 1840 and 1848. Hartley's Digest, 734, 735, and 737, 738. For even if it appeared that the marriage took place after the act of January 20, 1840, and that the wife had money at the time of the marriage, the right of the husband in such money is not affected by the third section of the act of 1840 (Art 2409); the same not being paraphernalia as defined at common law. 2 Roper on property, ch. 17. s. 3, p. 140, *et seq.* The creditors of the husband have a right to subject to their debts the lots in question, whether the same be regarded as the separate property of the husband, according to *Love* vs. *Robertson*, 7 Texas, 11, or be regarded as the common property of the husband and wife. The act of March 13, 1848, declares in so many words (in p. 21) that "all property, both real and personal, of the husband owned or claimed by him before marriage, and that acquired afterwards by gift, devise or descent, as also the increase of all lands or slaves thus acquired, shall be his separate property;" and (in p. 3) that all property acquired by "either husband or wife during the marriage, except that which is acquired in the manner prescribed in the second section, shall be deemed the common property of the husband and wife, and during coverture may be disposed of by the husband only; *it shall be liable for the debts of the husband.*"

The cases in Louisiana of *Montegret*, &c., vs. *Truart*, &c., 7 Mart., 362, *Ducrest's heirs* vs. *Bijeau's estate*. 1 Mart. N. S., 194, *Ford* vs. *Ford*, &c., 1 Louis., 206, *Savenat*, &c., vs. *LeBreton*, &c., Id., 520, *Borie* vs. *Borie*, 5

Id., 89. *Dominguez* vs. *Lee*, &c., 17 Id., 300, *Terrell* vs. *Cutrer*, 1 Rob. Louis. R., 368, and *Smalley* vs. *Lawrence*, 9 Id., 214 have been under the consideration of the Supreme Court of Texas. *Scott*, &c., vs. *Maynard*, 1 Allam, 550; *McIntyre* vs. *Chappell*, 4 Texas, 198. In the case of *Ford* vs. *Ford* the opinion had been pronounced that the attempt to screen community property from community debts by a separate right alleged by one of the partners, requires strict proof of the right alleged. The court there thought there was a legal presumption that property acquired during marriage by purchase, whether the acquisition be made in the joint names of husband and wife, or in the name of either separately, must be considered common property, which can be defeated only by certain and positive evidence that it was acquired by the separate funds of the parties. And considering the property then to be community property of husband and wife, it held that the same was subject to seizure on judgment obtained against the husband during his marriage. 1 Louis., 206, 207. The rule of the case is recognized and acted upon in 1849, in Lott vs. Keach, 5 Texas, 369. Subsequent to Love vs. Robertson, 7 Id., 10, the rights of creditors by judgment against the husband were sustained in Huston vs. Curl, 8 Texas, 239, and Gilliard vs. Chessney, 13 Id., 337. Subsequent to Higgins vs. Johnson, 20 Texas, 334, the question was considered both under the acts of 1840 and 1848, and their rights held clear, in Portis vs. Parker, 22 Texas, 702, 703. The case of DeBlane vs. Lynch, 23 Texas, 25, ruled White &c., vs. Lynch & Co. 26 Texas, 105. The cases of Huston vs. Curl, 6 Texas, 239, and Higgins vs. Johnson, 20 Id., 389, 394, are recognized in 1862; the court saying: "No doctrine is better settled than that property purchased during the marriage, whether the conveyance be in the name of the husband or the wife, or in the joint names of both, is to be taken *prima facie* to belong to the community." Mitchell vs. Marr, 26 Texas, 331.

The court therefore should reverse so much of the decree as decrees that the bill be dismissed as to Mrs. Nicholson and that she recover her costs, and should decree that the lots mentioned in the deeds of the 13th June, 1857, pp. 15, 17, 18, be sold to satisfy complainants' judgment.

CONWAY ROBINSON,
for CLEMENTS & SHELDON.

NUMBERS 17 AND 18.

IN THE

Supreme Court of the United States.

NELSON CLEMENTS AND EDWARD SHELDON,

Surviving Partners, &c.,

v.

JAMES NICHOLSON, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

ARGUMENT FOR THOMAS C. MOORE.

GEO. W. PASCHAL.

26 EXCHANGE PLACE, N. Y.

NEW YORK:
C. A. ALVORD, 15 VANDEWATER STREET.
1867.

U. S. SUPREME COURT.

CLEMENTS AND SHELDON
v.
NICHOLSON AND MOORE.
} Nos. 17 and 18.

These are cross appeals.

THE PLEADINGS—THE BILL.

THE bill charges that on the 20th of November, 1852, the complainants recovered judgment against the defendants for $11,060.04. The exhibit shows that the judgment was upon a note executed on the 30th of September, 1851. It is charged in the bill that the debt was, in fact, contracted in the previous March; that Moore purchased the remnant of Nicholson's goods on the 5th of July, 1851; that the defendant, Nicholson, made this sale to Moore with the intent to defraud his creditors; that the stock was worth $18,000; that Nicholson was then in failing circumstances, which fact was known to Moore; that the sale was collusive, being at a fixed price; and the profits to be divided between Moore and Nicholson; that there was a fraudulent conveyance of two lots to Moore at the same time; the charge, in fact, being, that the sale was of $12,000 worth of goods for $8,000, when in Bastrop they were worth $27,000. There is also an immaterial charge, that Moore advised Nicholson to withhold two of the notes given for the goods from his assignment for the benefit of his creditors. It is charged that, in consequence of this sale, the complainants could not obtain satisfaction of their execution.

FIRST AMENDMENT.

An amended bill, which has no place in the record, because there was no leave under the forty-fifth rule, describes the lots and charges the sale to be fraudulent, and interrogates the defendants as to the consideration.

THE ANSWERS.

The answer of Nicholson admits his indebtedness to the complainants, but he denies every charge of fraud, fraudulent collusion, or intention; and he positively denies that the real estate transaction was, in any wise, connected with the sale of the merchandise. As to the case made by the bill, every allegation as to fraud is denied, generally and specially. He says, in answer to special interrogatories, that the goods sold to Moore amounted, at New York cost, to $8,556.72; and that they were sold to Moore at twenty *per cent.* discount; the sale amounted to $6,310.35, which Nicholson says was their full worth. The lots, he says, were sold to Moore, and repurchased from him by Nicholson's wife for the purchase-money; and she sued Moore, and had the title conveyed to her by a decree of the Court (p. 21–25). Moore denies all knowledge of the indebtedness of his co-defendant, Nicholson. He admits the purchase from Nicholson at the price stated by Nicholson. He swears that the purchase was made in the utmost good faith. He says that the goods at New York invoice prices amounted to $7,887.75; that they were originally invoiced at high rates, and, being a broken and culled stock, they were not worth New York cost in Bastrop. He denies all collusion with Nicholson, and all partnership in profits. He denies giving any advice to Nicholson about his assignment, or about any matter whatever.

As to the lots, he says that, anterior to the purchase of the goods, 12th June, 1851, he purchased them for $860, which he paid in good faith; that he afterwards sold the lots to Mrs. Rebecca Nicholson, who paid for them, in good faith; that he conveyed them under a decree of court, and one of them has been sold to pay Nicholson's debts. In answer to

the interrogatories, he says that the goods purchased of Nicholson at New York invoice prices amounted to $7,887.65; that he gave his notes for $6,310.35, which he had since paid. He denied that he had ever paid any profits to Nicholson.

SECOND AMENDED BILL.

The complainants having put some interrogatories to the defendants for which no foundation had been laid, they afterwards (irregularly and without leave) amended, charging that the defendants had the original New York invoices of the goods in their possession; they also alleged that they had the invoice of Moore's purchase from Nicholson, and they charge that Moore had sold the goods at a profit of fifty *per centum*; they also charge that the redemption of the lots by Mrs. Nicholson was fraudulent; at the same time they charge that the lots are still subject to execution. They pray that she may be made a party, and ask for a sale of the lots. A subpœna was issued to Rebecca Nicholson.

ANSWER TO THE AMENDMENTS.

In answer to the amended bill, Nicholson denies that the New York invoices were delivered to Moore; says that the goods were remnants, running through several years of invoices (p. 35). As to the lots, the transaction is explained and all fraud denied. Moore denies all knowledge of the New York invoices, and accounts for his own invoice (p. 37). He denies selling the goods at a profit, and claims that as the sale was in good faith, such a question could not be a matter of inquiry. He disclaims all interest in the lots.

Rebecca Nicholson positively answers that she purchased the lots from Moore with her separate funds (p. 39), which she brought into the marriage.

NO REPLICATION.

There is no replication. On the 11th December, 1854, the complainants filed a paper in these words:

"The *plaintiffs* in this cause hereby join issue with the defendants, James Nicholson, Thomas C. Moore, and Rebecca H. Nicholson, and will hear the cause, on bill, answer, and proofs, against the defendants" (pp. 40, 41).

Therefore the cause really stands upon bill and answers. The case made by the complainants is at most a charge that Nicholson sold certain property to Moore, to hinder, delay, and defraud his creditors; and that, as to the real property, Moore afterwards conveyed it to Mrs. Nicholson, and thereby made it liable to execution. But the defendants deny every *scintilla* of fraud; and there being no replication, there is an end of the case.

But it may be urged that the agreement on p. 41, dated 9th June, 1854, waived the necessity of putting the cause at issue. But that agreement was six months anterior to the attempted replication. It gave leave for putting the cause at issue on the next rule day; and stipulated for examining witnesses, as though it was at issue. But *non constat*, that the depositions of the witnesses could be read unless the cause should be put at issue.

The decree (page 99) does not show whether the depositions of the witnesses were read or not. Certainly they could not legally be read. Therefore, as this cause is here, as if anew, we insist that the hearing be had upon the pleadings; and that decrees be rendered for the defendants in both causes.

But should the Court examine the depositions, it will be found that they are of that uncertain and unsatisfactory character, which will not warrant a decree as for a fraudulent conveyance.

NOTES OF THE EVIDENCE.

Warren Larkins swears, that there were several thousand dollars' worth of goods sold to Moore; that Nicholson's reputation for a short time before the sale was that of a failing

man; that witness settled a claim in favor of Thomas House, a short time before, with N. for ten thousand dollars; that Nicholson had assigned a part of his goods while they were *in transitu;* that N. told witness of his embarrassments: that they called Moore and they advised together, and afterwards witness caused to be drawn a deed of assignment of N.'s effects to Moore as assignee; that M. afterwards told witness that he had declined to take the assignment, but had bought the goods absolutely; that the object was to secure Nicholson's creditors against loss; this witness identifies a maudlin letter from Nicholson to F. W. Chandler, the complainants' solicitor. This letter is on pages 68 and 69, and cannot outweigh the sworn answer of Nicholson. It comes as near proving some secret collusions between the complainants' solicitor and the defendant Nicholson, as any thing else. There was no foundation laid for it in the bill; it was of a date long after the sale, and is wholly out of place.

T. B. J. Hill, a witness for the complainants, testifies to the bad condition of the goods and the bad bargain which Moore made in purchasing them; he formed a partnership with Moore and had every means of knowing; they sold the goods at a loss; that the notes given for the goods were transferred to Rutherford, assignee, and to N.'s creditors, and paid.

William Dunbar, a witness for the complainants, testifies that, previous to the sale, the defendant Nicholson was considered solvent; afterwards he was known to be insolvent (p. 72). This witness also testifies to the fairness of the purchase of the lots by Moore (p. 73). George W. Jones testifies to the sale, and to some conversation he had with the parties while the invoice was being made up. Witness had heard of the pecuniary embarrassments of Nicholson. Witness called to get a settlement of a debt of Nicholson. Both parties assured him that it was the intention of Nicholson to secure all his home-creditors; and it seems to have been done, as far as the witness was concerned; for he was paid. The witness speaks of the parties and clerks hurrying "to complete the invoice as soon as practicable, lest the United States Marshal might disconcert the arrangement." But he

does not say how he became in possession of this opinion. The witness C. C. McGinnis proves nothing.

R. A. Rutherford (p. 77) proved same immaterial facts respecting T. W. House. He also proved the insolvency of Nicholson, and the character of the assignment, and the extent of the payments. This witness was the assignee.

Samuel Porter proves the sale, corresponding to the answers of the defendants. He speaks of Nicholson being in failing circumstances; but does not know that Moore knew it; the sale was agreed upon after two or three days' negotiation, and an invoice regularly taken from day to day until it was completed. This witness had been the clerk of Nicholson, and he proves that the goods were many of them old and unsalable. With the best opportunity of knowing, he proves that Moore got a bad bargain.

William T. Gamble had selected from Nicholson's stock, and found that they were not worth New York cost. He could not find $1,000 worth which he would take at that cost (p. 83). This witness and J. C. Higgins prove that Nicholson was in failing circumstances; but, although strictly examined, they fail to prove any knowledge of Moore of that fact. Higgins and Gamble both examined the stock and found the goods to be in bad condition, and hence they both refused to purchase at cost. Robert Hall really proves nothing of any moment. The statements of Nicholson, like his letter to Chandler, made and written after the sale, really go for nothing.

James H. Gillespie, a witness for the defendants, proves the bad condition of the goods, and that the witness refused to share Moore's bargain. The answers of S. C. Cunningham are to the same effect.

J. C. Radford had been the clerk of Nicholson for years; and knew the age and bad condition of the goods.

Wilson Kennedy, who witnessed the sale, and assisted in the invoice, proves the fairness of the transaction, and that the goods were high at the price paid. L. D. Hill really proves nothing.

All the evidence shows that the transaction was open and fair; the sale after the goods had been offered to other

merchants, and that Moore was a responsible man, who could have purchased on good terms in New York, where he might have found better bargains; that the invoice was carefully made; and, after trying the goods at retail, Moore and Hill sold the residue to C. K. Hall at the same price which Moore paid Nicholson for the remnants.

DEDUCTIONS FROM THE PROOFS.

The most that can be deduced from the statements of all the witnesses is—

First. That when the sale was made, Nicholson had failed or was in failing circumstances; and there may be some evidence conducing to prove that Moore knew it, or might have known it by diligent inquiry.

Second. The proof does not establish any intention to defraud, delay, or hinder creditors; but, on the contrary, all the witnesses agree, that the object of Nicholson was to pay his debts, giving a preference to his home-creditors; and the assets were used for that purpose.

Third. The effort to overcome the positive denials of the defendants to the charge of collusion, whereby Nicholson was to retain an interest, failed. The only tendency in that direction is the statements of Nicholson after the assignment, which cannot overcome his sworn answer.

There was no material proof about the lots.

THE DECREE AND APPEALS.

The Court dismissed the bill, as to Rebecca Nicholson; found that the sale of the goods was fraudulent, and intended to delay, hinder, and defraud creditors, and therefore the same is annulled and set aside.

Costs were decreed for Rebecca Nicholson and against James Nicholson, and Thomas C. Moore. This decree was rendered on the 28th December, 1855; the complainants prosecuted their appeal on the 30th June, 1860.

The grounds alleged are, the failure to find the lots of Rebecca Nicholson, subject to execution; and the failure to require Moore to return the goods or else be subject to execution.

On the same day the defendant, Thomas C. Moore, appealed, on the grounds, that the decree finding the sale fraudulent was erroneous; that the bill should have been dismissed, and a decree for costs ought not to have been rendered.

THOMAS C. MOORE'S POINTS.

We maintain—

First. In the state of the pleadings, the Court can only consider the cause upon the case properly made by them.

Second. That as the answers deny all the equity in the bill, and there was no replication, the only proper decree was to dismiss the bill.

Third. But if the evidence be considered, the answers are not shaken by the statements of the witnesses.

First. The cause really stands upon the pleadings.

The LXVIth rule requires the complainant to file a general replication, or the defendant is entitled to an order, as of course, to dismiss the bill. The only question is as to the sufficiency of the paper filed, as a general replication. That it is not so in form is conceded. It does not assert the truth of the allegations in the bill, and offer to prove them; nor does it deny the statements in the answers. Cooper's Eq. Pl., 328, 329; Gilb. For. Rom., 45.

"The replication contests the answer; for it avers the bill to be true, and denies the answer. But if no replication be filed, and the cause be set down upon the bill and answer only, the answer stands for truth, because, if you do not reply to the answer, there is no *litis contestatio* in relation to it, and then it must be admitted to be true." Story, Eq. Pl., 7th edition, § 877, note 5.

The paper in this record does not contest the answer. It

merely asserts that "the plaintiffs join issue with defendants, and will hear the cause on bill, answer, and proofs." This is not a mere irregularity in form; it is a failure to put the cause at issue. "A general replication is a general denial of the truth of the defendant's plea or answer, and of the sufficiency of the matter alleged in it to bar the plaintiff's suit, and an assertion of the truth and sufficiency of the bill." Cooper's Eq. Pl., 329, 330; Mitford's Eq. Pl., by Jeremy, 321, 322; Story's Eq. Pl., § 878.

This definition is strictly in accordance with the form in universal use, no essential of which can be omitted. Barton's Suit in Equity, 143, 145; Story's Eq. Pl., § 878, note 4.

SECOND. The defendants, under the rule, might have had a decree of course to dismiss the bill; and as he did not take it, and the complainants brought the cause to a hearing, the defendants are now entitled to such a decree, not only upon the rule, but because of the general principle, that where they deny all the equity in the bill, and there are no proofs to overrule the answer, the defendants are entitled to a decree of course. As there is no statement that the evidence was read, this Court will not presume that it was, in the absence of an issue.

THIRD. But if the proofs be consulted, they do not make such a case as overcomes the answer. The clause of the Texas statute, which it is claimed reaches this case, is substantially copied from the statute of the 13th Elizabeth. Paschal's Annotated Digest, Art. 3876, note 906; Bryant *v.* Kelton, 1 Tex., 418, 428; Twyne's case, 3 Coke, 80; 1 Smith's Leading Cases, 30. The fraudulent intent must be satisfactorily proved; and, as against a sworn answer, denying all fraudulent intention, the proof must be by two witnesses, or else by one witness and strong corroborating circumstances. Fraud will not be presumed, but must be proven. This statute has been under discussion in Texas, as elsewhere; and the cases are generally cited in note 906 of Paschal's Digest, already noticed. The general principles of Twyne's case, and the leading authorities upon the subject, have been followed.

Bryant *v.* Kelton, 1 Tex., 418 to 433; Edrington *v.* Rogers, 15 Tex., 188; Moseley *v.* Gainer, 10 Tex., 393; Mills *v.* Howeth, 19 Tex., 259; Humphries *v.* Freeman, 22 Tex., 50.

But these cases, and those which they review, establish no more than that if the sale of Nicholson was with the actual intention to delay and hinder, or defraud his creditors, and Moore knew it, or might have known it, by reasonable diligence, the sale will be void. But the facts that Nicholson had creditors, and that his means were insufficient to pay them, and that he apprehended suits, and preferred to pay his home creditors, would not, in themselves, prove the fraudulent intention. The man in debt may sell to pay his debts, and he may prefer creditors. Baldwin *v.* Peet, 22 Tex., 710 to 724; same case, 26th Feb., 1860; Paschal's Dig., p. 652; 25th Texas.

In this case the complainants' witnesses prove that the intention of Nicholson was to use his goods to pay his debts. Being called upon, he settles with House ten thousand dollars, paying part in goods, which he had the right to do. Then he sells the residue for their full value, not for cash, which he pockets, but the notes of Moore, which he turns over to his creditors, and which are paid to them. These are circumstances which show that there could have been no fraudulent intention.

While the complainants made every effort to prove that the sale was secret, the proof is that it was most public. Full invoices were taken, and the goods were sold for full value, the possession was changed, and the defendant sold what he could at retail, and got the balance off at wholesale.

The complainants had not then sued, nor did they for fifteen months afterwards. The note is dated 30th Sept., 1851, and there is not a scintilla of proof in the record that it was given to close an account which existed anterior to the sale to Moore.

The complainants say that they recovered their judgment against Nicholson on the 20th November, 1852. Before that time the goods had been sold by Moore, and the price paid for them used to pay Nicholson's debts. The character of the note given (p. 10) would look as though the plaintiffs,

fifteen months after the sale, were looking to Nicholson's assignment for their dividends. The complainants inferentially complain that two of Moore's notes, amounting to one thousand dollars, were left out of Nicholson's assignment. But the charge is denied, and the assignment is not in the record, and there is no proof to sustain the charge.

The demand is therefore stale, and such as cannot receive favor in a court of equity. The complainants do not, in fact, show that they were hurt. On the contrary, they industriously prove an effort on the part of Nicholson to pay his debts.

And so they prove an expression of his belief, that if let alone or allowed to manage his affairs he could succeed.

The learned Texas Judge thus construes the statute in Baldwin *v.* Peet, 22 Tex., 714:—

"To ascertain the exact character of this intention, which renders a deed void, it is proper to refer to the language of the statute. It is that every grant, &c., had or made, and contrived of malice, fraud or covin, collusion or guilt, to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, &c., shall be taken to be utterly void as to such creditors. But this shall not extend to any estate or interest in lands, goods, &c., which shall be, 'upon good consideration, and *bonâ fide*, lawfully conveyed or assured to any person,' &c.

"Here we are presented with two distinct motives or intentions with which a deed may be made; the one vitiating and the other sustaining it; and however difficult it may be to determine which one of the two was the cause of its execution, practically, that must be the issue to determine its validity. A failing debtor has not the right, maliciously, covinously, &c., to execute a deed with intent to hinder, delay, or defraud his creditors. A failing debtor has a right, upon a good consideration, and *bonâ fide*, lawfully to convey or assure by deed of assignment his goods, &c., in trust to pay his creditors, with or without a preference" (Burrill on Assignments, 98, 99). And see to the same effect, Twyne's case, and Bryant *v.* Kelton, 1 Tex., 419.

The general principle quoted in the same opinion from

Judge Gaston as clearly states the rule deducible from all the authorities, as it is possible to state it. "Every conveyance of property by an insolvent or embarrassed man, to the exclusive satisfaction of the claims of some of his creditors, has, necessarily, a tendency to defeat or hinder his other creditors in the collection of their demands. But if the sole purpose of such a conveyance be the discharge of an honest debt, it does not fall under the operation of the Statute of Frauds. It is not embraced within its words, which apply only to such as are contrived of *malice*, *fraud*, *collusion*, or covin, to the end, purpose, and intent to hinder, delay, and defraud creditors." These rules are sustained by Twyne's Case with American notes of cases. 1 Smith's Leading Cases, pages 33, 34, 35, and 48; Wright *v.* Linn, 16 Tex., 34; Goodrich *v.* Downs, 6 Hill's Rep., 438; Bryant *v.* Kelton, 1 Tex., 415.

The specific malicious, covinous, guileful intention to hinder, delay, or defraud creditors is always a question of fact, to be ascertained upon evidence, either by the jury or the Chancellor. Therefore, subject to general rules, which can hardly be said to explain the statute, as each case must depend very much upon its own peculiar facts. Linn *v.* Wright, 18 Tex., 317; Seward *v.* Jackson, 8 Cow., 406; Goodrich *v.* Downs, 6 Hill, 438; Baldwin *v.* Peet, 22 Tex., 717.

This is the interpretation of the statute settled in Texas, after a most careful consideration of Twyne's case, and all the subsequent cases down to 1848. It was held that there are no frauds *per se;* or badges which were frauds, as rules of law; but that even the badges, which were *primâ facie* evidences of fraud, were always subject to explanation, as to the real intention of the parties. Bryant *v.* Kelton, 1 Tex., 418 to 433.

In the case under consideration there was sale, payment, and delivery, upon a full and valuable consideration. And the effects went to the benefit of the creditors of Nicholson. Therefore, there is no badge of fraud, nor circumstance which needed explanation upon the part of the defendant. It rested upon the complainants to prove the covinous motive; and in this they wholly failed.

The sale was not general, secret, pending a suit, or in trust; the possession was changed, and the consideration was valuable. The *object* proven by the complainants was to pay debts, not to hinder or delay them; and that object was consummated.

The doctrines upon the subject have been made so familiar in the text-books and the leading cases, that any discussion would only be a general lecture upon facts and intents. Therefore it will only remain to discuss the record at bar, and leave it to the Court to apply the familiar principles.

Respectfully submitted,

GEO. W. PASCHAL & GEO. W. PASCHAL, Jr.

For THOMAS C. MOORE.